

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
DEC 28 1984

RECORDED
DEC 26 1984

MIDWAY MANUFACTURING
COMPANY, an Illinois
corporation,

Plaintiff,

v.

NORTH AMERICAN PHILIPS
CONSUMER ELECTRONICS CORP.,
et al.,

Defendants.

No. 81 C 6434

Honorable George N. Leighton

FINAL PRETRIAL ORDER

This matter having come before the Court as a pretrial conference held pursuant to Rule 16 of the Federal Rules of Civil Procedure, 28 U.S.C., and Jenner & Block having appeared as counsel for plaintiff Bally Midway Manufacturing Company, and Reuben & Proctor and Neuman, Williams, Anderson & Olson having appeared as counsel for defendants North American Philips Consumer Electronics Corporation ("NAPCEC"), Park Television and Edward Averett, the following action was taken:

Nature of Action and Jurisdiction

This is an action brought pursuant to 17 U.S.C. §§ 106 and 501 for alleged copyright infringement, and for alleged violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), the Illinois Uniform Deceptive Trade

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Practices Act, Ill. Rev. Stat. Ch. 121-1/2, §§ 311-317, the Illinois Consumer Fraud Act, Ill. Rev. Stat. Ch. 121-1/2, § 262 and for alleged unfair competition in violation of the common law. Defendants' counterclaim challenges the validity of the copyright and seeks damages for plaintiff's alleged wilful and wrongful assertions against them. The jurisdiction of the Court is invoked under 28 U.S.C. §§ 1331(a)(2), 1338(a) and 1338(b). The jurisdiction of the Court is not disputed.

Stipulation and Statements

The following written statements were submitted and are attached to and made a part of this order:

- (1) A comprehensive agreed statement of all uncontested facts, stated as near as may be in chronological or other appropriate sequence (Attachment 1).
- (2) Agreed statements setting forth the qualifications of the expert witnesses to be called by each party (Attachment 2).
- (3) A list of the witnesses each party expects to call (Attachment 3).
- (4) Separate statements of the contested issues of fact and of law not agreed to (Attachment 4).
- (5) A list of all depositions to be read into evidence and statements of any objections and the grounds of those objections (Attachment 5).
- (6) An itemized statement of special damages (Attachment 6).

- (7) Waivers of those claims or defenses, if any, that have been abandoned by the parties (Attachment 7).

Exhibits

All exhibits to be offered by the parties were marked prior to the final pretrial conference.

Plaintiff's Exhibits

The exhibits listed in attachment 8 were offered by the plaintiff and received in evidence. [Attachment 8 lists the identification number and a brief description of each exhibit.]

The exhibits listed in attachment 9 were offered by the plaintiff and objected to by the defendant on the ground stated. [Attachment 9 lists the identification number and a brief description of each exhibit and state briefly the ground of objection, e.g., relevancy, hearsay.]

Defendant's Exhibits

The exhibits listed in attachment 10 were offered by the defendant and received in evidence. [Attachment 10 lists the identification number and a brief description of each exhibit.]

The exhibits listed in attachment 11 were offered by the defendant and objected to by the plaintiff on the ground stated. [Attachment 11 lists the identification number and a brief description of each exhibit and states briefly the ground of objection, e.g., relevancy, hearsay.]

The additional action taken at the final pretrial conference (amendments to pleadings, further stipulations of the parties, dispositions of motions, separation of issues of liability and damages, provision for impartial medical examination, etc., if necessary) is stated in attachment 12.

Other Matters

Expert Witnesses. The plaintiff is limited to 1 expert witness whose name has been disclosed to the defendant. The defendant is limited to 1 expert witness whose name has been disclosed to the plaintiff and an expert witness on the Japanese language whose name has not been disclosed to plaintiff, provided that timely notice of the identity and qualifications of such witness is provided to plaintiff (see Attachment 2). Each of the parties may, however, offer rebuttal testimony of other expert witnesses if necessary.

Supplementary Lists of Witnesses. Each of the parties may further supplement the list of witnesses (attachment 3) upon application to the Court, and for good cause shown.

Rebuttal Witnesses. Each of the parties may call such rebuttal witnesses as may be necessary, without prior notice thereof to the other party.

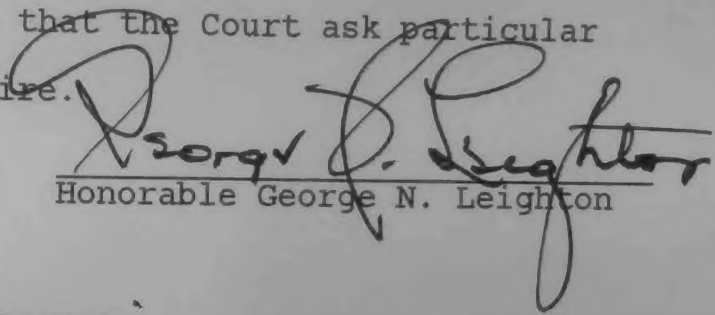
Length of Trial. The probable length of trial is 8-10 trial days. The case will be listed on the trial calendar to be tried when reached.

Number of Jurors. There shall be six jurors and two alternate jurors.

Modification of This Order. This pretrial order may be modified before or during the trial to prevent manifest injustice. Modifications may be made either on application of counsel for the parties or on the Court's own motion.

Jury Instructions. Requests for instructions shall be submitted to the Court at the commencement of the trial, but counsel may submit supplemental requests for instructions during the course of the trial or at the conclusion of the evidence on matters that cannot reasonably be anticipated.

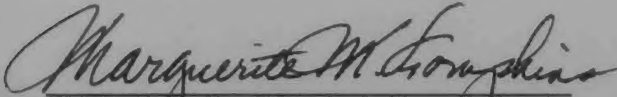
Jury Voir Dire. The Court will conduct voir dire. Counsel may submit requests that the Court ask particular questions during the voir dire.


Honorable George N. Leighton


DEC 18 1984

Dated: _____

APPROVED AS TO FORM AND SUBSTANCE:


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Attachment 1

Statement of Uncontested Facts

1. Plaintiff Bally Midway Mfg. Co. ("Midway") is a developer and manufacturer of coin-operated video games.

2. Defendant North American Philips Consumer Electronics Corporation ("NAPCEC"), among other things, manufactures and sells home video games.

3. The Magnavox Odyssey² video game system consists of a console or mainframe that may be connected to a home television set. The console or mainframe has a slot in which a cartridge can be placed.

4. At the time that it filed its Answers to the Complaint and Amended Complaint herein, defendant Park Television d/b/a Park Magnavox Home Entertainment Center ("Park") was a retailer of audiovisual equipment including home video game consoles and home video game cartridges such as the Odyssey² home video game console and the K.C. Munchkin home video game cartridge.

5. Park has performed and displayed the K.C. Munchkin home video game cartridge in conjunction with the Odyssey² home video game console and has sold the K.C. Munchkin home video game cartridge.

6. Defendant Edward Boyle Averett, III ("Averett") is an individual residing in Tennessee. Averett designed and programmed home video games for NAPCEC and its affiliate(s)

The Magnavox Company and/or Magnavox Consumer Electronics Corporation for use with the Magnavox Odyssey² home video game console. Averett designed the home video game cartridge known as K.C. Munchkin, and granted NAPCEC a license with respect thereto.

7. Namco Limited is a Japanese company that manufactures video games.

8. Midway changed the name of the Puck-Man audiovisual work to Pac-Man.

9. The Pac-Man work referred to in Box No. 1 of Certificate of Copyright Registration No. PA 83-768 is the Pac-Man audiovisual work that is fixed in the Pac-Man coin-operated video game manufactured by Midway. This game was marked as Plaintiff's Exhibit No. 16 and Defendant's Exhibit No. 14 at the hearing held in this action commencing in November, 1981.

10. The Pac-Man coin-operated video game was introduced in the United States in October, 1980.

ATTACHMENT 2

DESIGNATION OF EXPERT WITNESSES

Plaintiff has designated Howard J. Doherty as an expert. Plaintiff has agreed to permit defendants to depose Mr. Doherty and to reserve any objections they may have to Mr. Doherty's testimony or qualifications until defendants have had an opportunity to review Mr. Doherty's qualifications and to depose him.

Defendants reserve the right to object to the testimony and qualifications of plaintiff's expert witness, pending plaintiff's provision to defendants of the expert's qualifications and sufficient opportunity in advance of trial to depose him.

Defendants have not retained an expert as of this date, but may retain William F. Madden, an attorney and certified public accountant, as an expert on the damages issue. If defendants decide to use Mr. Madden as an expert, they will supply his qualifications and provide plaintiff sufficient opportunity in advance of trial to depose Mr. Madden. Plaintiff reserves any objections it may have to Mr. Madden's testimony or qualifications until plaintiff has had an opportunity to review Mr. Madden's qualifications and to depose him.

Defendants reserve the right to designate an expert on the Japanese language to translate documents not stipulated to by plaintiff and agree to provide timely notice in advance of trial of the identity and qualifications

of such expert. Plaintiff reserves the right to object to the testimony and qualifications of such expert.

Attachment 3

Plaintiff's List of Witnesses

1. Stanley Jarocki
2. David Marofske
3. JoAnn Mason
4. Thomas P. Gallo
5. Ralph W. Staup
6. Edward Averett
7. Gerald A. Michaelson
8. John Charles Wattles
9. Dane Kite
10. David M. Arganbright
11. Alfred Kahn
12. Rita E. Hutner
13. Harold McDowell
14. Steven Rivkin
15. Hideyuki Nakajima
16. Patricia Richter
17. Howard J. Doherty
18. Michael Moone
19. William Kunkel
20. Ronald Geise
21. Toru Iwatani
22. Charles Paul
23. Henry Ross

ATTACHMENT 3

Defendants' List of Witnesses

1. Charles Paul
2. Henry Ross
3. David Marofske
4. Stanley W. Jarocki
5. Alfred T. Kahn
6. Harold McDowell
7. John Wattles
8. David M. Arganbright
9. Edward Averett
10. Gerald Michaelson
11. Stephen Rivkin
12. Ralph Staup
13. Rita Hutner
14. Dane Kite
15. Hideyuki Nakajima
16. JoAnn Mason
17. Thomas Gallo
18. Patricia Richter
19. Michael Moone
20. William Kunkel
21. Ronald Giese
22. Toru Iwatani
23. William F. Madden
24. Expert on the Japanese language

Attachment 4

Plaintiff's Statement of Contested Issues of Fact and of Law

1. Plaintiff Bally Midway Mfg. Co. ("Midway") is an Illinois corporation, with its principal offices and production facilities in Franklin Park, Illinois. Midway is a leading developer and manufacturer of coin-operated video games. Midway owns exclusive rights under copyrights to numerous audiovisual works, owns the United States copyright to the Pac-Man audiovisual work described below, and owns trademark rights in the Pac-Man audiovisual work.

2. Defendant North American Philips Consumer Electronics Corporation ("NAPCEC") is a Delaware corporation licensed to conduct business in Illinois. NAPCEC conducts business and maintains offices in Knoxville, Tennessee. NAPCEC is a wholly owned subsidiary of North American Philips Development Corporation.

3. From at least February, 1981 through at least March, 1982, NAPCEC and its affiliate(s) The Magnavox Company and/or Magnavox Consumer Electronics Corporation manufactured and sold home video games and home video game cartridges, including the Magnavox Odyssey² home video game console. An Odyssey console owner can play different video games on the Odyssey² console by inserting different cartridges into the slot of the Odyssey console. The Odyssey² cartridges cannot be played on an Atari console. Conversely, cartridges

manufactured for the Atari system cannot be played on an Odyssey console.

4. From at least October, 1981 through at least March, 1982, NAPCEC, and its affiliates The Magnavox Company and/or Magnavox Consumer Electronics Corporation manufactured and sold the K.C. Munchkin home video game cartridge for use with the Magnavox Odyssey² console.

5. Defendant Park Television d/b/a Park Magnavox Home Entertainment Center ("Park") is a partnership with its principal office and place of business at 3634 West 95th Street, Evergreen Park, Illinois.

6. Defendant Edward Boyle Averett, III ("Averett") has received royalties of \$636,659 from NAPCEC resulting from sales of K.C. Munchkin home video game cartridges.

7. By letter dated March 4, 1982, NAPCEC agreed to indemnify Averett for any liability that he incurs in this action, provided that Averett permit NAPCEC to select attorneys to conduct the defense, permit NAPCEC to control the defense, and extend his co-operation to NAPCEC.

8. Prior to May 22, 1980, Namco Limited, a Japanese company, created an original audiovisual work titled Puck-Man which was marketed as a coin-operated video game. Puck-Man is a wholly original work of authorship with Namco Limited and comprises copyrightable subject matter under the copyright laws of the United States, Title 17, United States Code.

9. Namco Limited assigned "the entire right, title and interest" in statutory copyright in the United States and the Western Hemisphere for the Puck-Man audiovisual work to Bally Midway Mfg. Co. ("Midway") by an "Assignment of Copyrights," dated October 10, 1980 and recorded in the Copyright Office.

10. Midway changed the name of the Puck-Man audiovisual work to Pac-Man and secured the exclusive rights in and to all United States copyrights and trademarks rights in the Pac-Man audiovisual work. Midway has complied in all respects with all laws governing the Pac-Man copyrights. The Register of Copyrights has issued to Midway a certificate of copyright registration for the "Pac-Man Audiovisual Work," Reg. No. PA 83-768, effective November 13, 1980.

11. The facts stated in Certificate of Copyright Registration No. PA 83-768 are true.

12. Midway owns all right, title and interest in Copyright Registration No. PA 83-768.

13. Midway owns all right, title and interest in the nonfunctional design features of the Pac-Man audiovisual work in the United States.

14. Midway owns all right, title and interest in the Pac-Man trademarks, Reg. Nos. 1,259,254; 1,230,042 and 1,260,102.

15. Midway's Pac-Man game was introduced in the United States in October, 1980.

16. By early 1981, Midway's Pac-Man game gained
repute as a popular and commercially successful game.

17. By summer, 1981 Midway's coin-operated Pac-Man
game had become the most popular coin-operated video arcade
game in the United States.

18. An opinion poll entitled "The Players' Choice"
published in the November, 1981 issue of Replay Magazine
ranks "Pac-Man" as second among upright coin-operated video
games in earnings. Replay is widely circulated in the video
game industry, and the results of its regularly published
poll are relied upon as a general indication of popularity
of a video game by those in the industry. In addition,
Video Magazine and Electronic Games Magazine have commended
"Pac-Man" as the 1981 "Game Of The Year."

19. By agreement effective April 27, 1981, Midway
granted Namco an exclusive license with the right to sub-
license only to Atari the Pac-Man copyright and trademark
for home video and personal computer use, upon the following
conditions:

a) Atari agreed to use the Pac-Man trademark
only in connection with consumer video products of a
quality approved by Midway;

b) Midway reserved the right to terminate
the license as to Atari consumer video products that
failed to meet the quality level approved by Midway;

c) Midway retained the right to pursue
infringers and the right to be represented in any
action brought by Atari against infringers.

20. As set forth in paragraphs 8-10 of the Amended Complaint and the agreements referred to therein, Atari thereafter obtained from Namco the exclusive right under all copyrights to the Pac-Man audiovisual work for home video games and personal computers in the United States and its territories. Namco also granted to Atari exclusive license rights to the trademark Pac-Man for use on or in connection with home video games and computers in the United States.

21. North American Philips Consumer Electronics Corporation ("NAPCEC") and Edward Averett ("Averett") infringed Copyright Reg. No. PA 83-768 by reproducing, selling and otherwise distributing and by performing and displaying unauthorized copies of and/or a derivative work based upon the Pac-Man audiovisual work under the name K.C. Munchkin. Specifically:

- a) K.C. Munchkin was designed in an attempt to create a modified Pac-Man game that could be played on NAPCEC's Odyssey² home video game console;
- b) K.C. Munchkin was designed after Edward Averett viewed Midway's Pac-Man video game in an airport arcade;
- c) K.C. Munchkin was designed after Edward Averett played Pac-Man;
- d) K.C. Munchkin was designed after Ralph W. Staup of NAPCEC advised Averett that he liked Pac-Man and wanted to obtain a license to produce a Pac-Man home video game cartridge for use with NAPCEC's Odyssey² console;

e) K.C. Munchkin was marketed only after NAPCEC had attempted unsuccessfully to obtain from Midway the rights to produce Pac-Man for home video game use;

f) The appearance, characters, sounds, sequence of play, scoring and strategy of NAPCEC's K.C. Munchkin game are substantially similar to corresponding aspects of the Pac-Man game. Even the name "Munchkin" was copied; the advertising literature for Pac-Man refers to Pac-Man's gobbler figure as "munching" up the obstacles in its path.

22. In November, 1981, NAPCEC advertised, distributed and sold the K.C. Munchkin home video game cartridge on a nationwide basis. A full page color advertisement for the K.C. Munchkin home video game appeared in the November 16, 1981 issue of Newsweek magazine.

23. On November 18, 1981 Midway filed suit against NAPCEC and Park alleging, inter alia, that NAPCEC and Park infringed Midway's copyright in the Pac-Man audiovisual work and to enjoin them from advertising, promoting or selling the K.C. Munchkin video game cartridge.

24. On March 16, 1982, Hon. George N. Leighton, United States District Court, Northern District of Illinois, entered an order enjoining defendants from advertising, distributing, displaying, performing, selling or offering for sale the K.C. Munchkin video game cartridge.

25. NAPCEC and Averett aided and abetted others to distribute K.C. Munchkin and to publicly perform K.C. Munchkin in retail stores and to induce sales to consumers in violation of Midway's rights.

26. The K.C. Munchkin home video game infringes on Trademark Registration Nos. 1,259,524; 1,230,042 and 1,260,102, in that the gobbler and ghost figures in Pac-Man and K.C. Munchkin are so similar that the public could become confused and mistake K.C. Munchkin for a Pac-Man game.

27. Midway expended considerable effort and sums of money in developing, manufacturing, advertising and marketing Pac-Man in the United States. As a result of Midway's advertising, promotion and sales, the public has come to identify the mark Pac-Man and the non-functional design features of Pac-Man with Midway. Both the mark Pac-Man and the non-functional design features of the Pac-Man audiovisual work have acquired a secondary meaning associating them with Midway.

28. Defendants simulated the non-functional design features of Pac-Man in K.C. Munchkin, which defendants sold, advertised and offered for sale.

29. Defendants sold, advertised and offered for sale, and induced others to sell, advertise and offer for sale the K.C. Munchkin home video game as a home version of Pac-Man, thus creating the false impression that K.C. Munchkin is somehow backed, sponsored, produced or otherwise associated

with Midway. Defendants' conduct caused confusion among the public as to whether the game was a Pac-Man game.

30. Averett licensed, assigned and/or otherwise conveyed the rights in K.C. Munchkin with the intent and knowledge that North American would advertise, market, and distribute K.C. Munchkin for retail sale. NAPCEC and Averett provided distributors and retail dealers with the instrumentality and opportunity to engage in deceptive and unfair trade practices and have caused, encouraged and contributed to such deceptive and unfair trade practices. These deceptive and unfair trade practices include passing off the K.C. Munchkin home video game as a Pac-Man game; causing a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of the K.C. Munchkin home video game; causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by plaintiffs; and otherwise engaging in conduct which creates a likelihood of confusion or of misunderstanding. In addition, the distribution for retail sale of the K.C. Munchkin home video game provided distributors and retail dealers with the instrumentality and opportunity to infringe the Pac-Man copyright.

31. NAPCEC's distributors, or distributors of a corporation related to NAPCEC, have held out the K.C. Munchkin home video game as a Pac-Man game. NAPCEC or a corporation related to it and its distributors have otherwise passed K.C. Munchkin off as the Pac-Man home video game, have

otherwise unfairly competed with Midway and its duly authorized licensees, and have confused and deceived consumers.

32. NAPCEC's direct or indirect infringement of the Pac-Man copyright, its simulation of the nonfunctional design features of the Pac-Man audiovisual work, its unfair competition and its unfair and deceptive trade practices in relation thereto have been willful and deliberate.

33. Averett's activities in developing and promoting K.C. Munchkin constitute willful and deliberate infringement of the Pac-Man copyright and unfair competition.

34. Defendant Park has infringed the copyright in the Pac-Man audiovisual work by selling and otherwise distributing the K.C. Munchkin home video game and by performing and displaying the K.C. Munchkin home video game.

35. The aforesaid acts of NAPCEC, Park, and Averett constitute copyright infringement in violation of 17 U.S.C. §§ 1106 and 501.

36. The aforesaid acts of NAPCEC, Park, and Averett constitute false representations that K.C. Munchkin is sponsored by, authorized by, or affiliated with Midway in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

37. The aforesaid acts of NAPCEC, Park and Averett constitute deceptive trade practices in violation of the Illinois Uniform Deceptive Trade Practices Act, Ill. Rev.

Stat. Ch. 121- $\frac{1}{2}$, §§ 311-317, and further constitute violations of the Illinois Consumer Fraud Act, Ill. Rev. Stat. Ch. 121- $\frac{1}{2}$, § 262.

38. The aforesaid acts of NAPCEC, Park and Averett have been deliberate and intentional and constitute improper and unfair competition with Midway in violation of Midway's rights at common law.

39. Midway was damaged by the creation and marketing of the K.C. Munchkin home video game.

40. Midway held the exclusive rights to license other manufacturers, and did license other manufacturers, to manufacture and sell products using Pac-Man characters or the Pac-Man name. Midway held the right to receive royalties or other valuable consideration under many of these license agreements. The marketing of K.C. Munchkin impugned the integrity of Midway's licensing program, competed with products sold by Midway licensees and decreased the revenues which Midway received from the program.

41. Midway is entitled to:

(a) a declaration that copyright Registration No. PA 83-768 is valid and enforceable;

(b) a declaration that defendants NAPCEC, Park and Averett have infringed the PAC-MAN copyright;

(c) an order permanently enjoining defendants NAPCEC, Park and Averett and all their employees, servants, agents, distributors and persons in active

concert with them from displaying, performing, advertising, promoting, selling or offering for sale, or otherwise distributing the K.C. Munchkin video game or otherwise infringing the Pac-Man copyright;

(d) an order impounding for destruction all copies or reproductions of NAPCEC's infringing K.C. Munchkin home video games, and all plates, masters, tapes, film negatives, cassettes, circuit boards, computer programs and other means for producing such copies, and all advertisements and promotional literature therefor;

(e) an order directing an accounting of NAPCEC's, Park's and Averett's profits (including Averett's royalties) attributable to the infringement and awarding Midway such profits and its actual and/or statutory damages including treble damages for willful violation;

(f) an order directing NAPCEC to recall from its distributors all copies or reproductions of the K.C. Munchkin home video game;

(g) an order awarding plaintiffs punitive damages for the willful and wanton nature of North American's and Averett's acts equal to at least three times Midway's actual or statutory damages;

(h) an order awarding Midway interest, costs, and attorney's fees;

(i) an order awarding Midway such other and other and further relief as this Court deems just and appropriate.

ATTACHMENT 4

NAPCEC'S STATEMENT OF CONTESTED FACTS

In addition to the facts stated in the Agreed Statement of Uncontested Facts, NAPCEC believes that the following facts, although contested by plaintiff Midway, will be proven at trial.

THE PARTIES

1. Plaintiff, Bally Midway Mfg. Co. ("Midway") is, among other things, a manufacturer of coin-operated video games including Pac-Man. Midway was known as Midway Mfg. Co. until February, 1982 when it changed its name. Midway does not manufacture or sell home video game consoles or game cartridges.

2. Defendant North American Philips Consumer Electronics Corporation ("NAPCEC") is, among other things, a manufacturer and distributor of home video games including a game called K.C. Munchkin.

3. NAPCEC manufactures and sells its home video games through its affiliates The Magnavox Company and Magnavox Consumer Electronics Corporation. NAPCEC sells a home video console called the Odyssey² console and sells individual game cartridges to be used only in conjunction with the Odyssey² system.

4. Defendant Park Television d/b/a Park Magnavox Home Entertainment Center ("Park") sells audiovisual equipment including home video consoles and cartridges. At one time, Park sold the Odyssey² system and the K.C. Munchkin cartridge.

5. Defendant Edward Averett ("Averett") is a designer of home video games, primarily for NAPCEC.

6. Prior to the facts at issue here, Averett designed numerous home video games for NAPCEC to be used with the Odyssey² system.

7. Sales of home video game systems, consisting of consoles to be connected to a television set and individual game cartridges, began in the early 1970's, reached a peak in 1982, and then dropped off in the wake of the home personal computer industry. The peak sales period within any year was the Christmas season.

THE NAMCO/MIDWAY AGREEMENTS

8. Namco Limited is a Japanese company that, among other things, manufactures video games. Namco America is Namco Limited's United States subsidiary.

9. Midway contends that Namco developed an audiovisual work called Puck-Man prior to August, 1980.

10. In August, 1980, representatives of Midway visited Namco in Japan and examined the audiovisual work Puck-Man.

11. On August 16, 1980, Namco, Ltd. and Midway entered into a "Preliminary Agreement" under which Namco, Ltd. agreed to grant to Midway an exclusive license to sell a coin-operated video game named "Puck-Man" in the Western Hemisphere (including the United States). A copy of the Preliminary Agreement is DX___. [DX101.]

12. Midway changed the name of Puck-Man to Pac-Man.

13. Pursuant to the Preliminary Agreement, on October 10, 1980, Namco, Ltd. executed an Assignment of Copyrights by which it purported to assign its rights to the copyright to the coin-operated video game known as Pac-Man to Midway. A copy of the Assignment of Copyrights is DX____. [DX102.]

14. On October 11, 1980, Midway signed a letter acknowledging that the October 10, 1980 Assignment of Copyrights was to be governed by a License Agreement then being negotiated. A copy of that letter is DX____. [DX103.]

15. During October and November, 1980, Namco, Ltd., and Namco America (collectively "Namco") and Midway negotiated a formal license to allow Midway to manufacture and sell Pac-Man in the United States. The principal negotiators were David Marofske, the President of Midway, and Hideyuki Nakajima, the President of Namco America.

16. On November 4, 1980, Namco and Midway entered into a License Agreement (the "Namco/Midway License Agreement"). The Namco/Midway License Agreement granted Midway the exclusive right to produce and manufacture Pac-Man in the United States, and to sell Pac-Man in the Western Hemisphere. It also assigned to Midway all of Namco's rights in the trademark, logo and copyright to Pac-Man. A copy of the Namco/Midway License Agreement is DX____. [DX104.]

17. The Namco/Midway License Agreement covered all rights to Pac-Man in the United States, rather than only the coin-operated video game rights as in the Preliminary

Agreement, because Midway asked for such broad rights in order to have a stronger case against potential infringers.

18. At the time the Namco/Midway License Agreement was negotiated and executed, Midway, through its President, David Marofske, verbally agreed that Midway would return certain Pac-Man rights (including but not limited to home video game rights) to Namco, at no cost, should Namco request such rights.

19. On November 13, 1980, Midway filed a Certificate of Copyright Registration with the United States Copyright Office claiming that it owned all rights to the Pac-Man copyright in the Western Hemisphere. Midway did not disclose its oral agreement with Namco to the Copyright Office. A copy of the Copyright Registration is DX____. [PX1.]

20. The Namco/Midway License Agreement (paragraph 2(e)) had provided that if Namco desired to use the Pac-Man copyrights for "Home Video Cassettes," Midway would grant such rights at no cost.

21. On June 18, 1981, Namco and Midway executed an Addendum to the Namco/Midway License Agreement (effective as of April 27, 1981) which purported to change the definition of "Consumer Video Products" in paragraph 2(e) to include television set home video games but not table-top or hand-held games. (Paragraph 2(e) of the Namco/Midway License Agreement did not utilize the phrase "Consumer Video Products.") A copy of the Addendum is DX____. [DX100B.]

22. By paragraph 2 of the Addendum, Midway granted to Namco, at no cost and with no royalties, an exclusive license of its copyright and trademark rights in Pac-Man for "Consumer Video Products," with a right to sublicense said rights only to Atari, Inc.

THE ATARI SUBLICENSE

23. Atari, Inc. ("Atari") is a manufacturer and distributor of consumer electronics products, including video games, home computers, and coin-operated video games. Atari was originally one of the parties to this suit.

24. On April 27, 1981, Namco entered into a License Agreement with Atari (the "Namco/Atari Sublicense") by which Namco granted to Atari the right to sell Pac-Man "consumer video products". As in the Addendum for the Namco/Midway License Agreement, consumer video products were defined to include television set home video games but not table-top or hand-held games. The Namco/Atari Sublicense also granted to Atari the right to use the Pac-Man trademarks and copyrights for consumer video products. Atari was not required to pay any royalties to Midway. A copy of the Namco/Atari Sublicense is DX___. [DX100.]

25. The copyright and trademark rights to Pac-Man home video games and personal computers were also licensed by Namco to Atari by agreement dated as of April 27, 1981 (signed on November 10, 1981). A copy of the agreement is DX___. [DX109.]

26. Under the Namco/Atari Sublicense, Atari has the sole right to control litigation in connection with its enjoyment of the license. Atari is entitled to retain all monetary damages recovered in such litigation. Under the same license, Atari may sue for infringement in its own name and in the name of Midway.

27. On December 9, 1981, Namco and Atari entered into an additional License Agreement by which Namco licensed to Atari the right to sell Pac-Man personal computer products. A copy of this agreement is DX____. [DX110.] Atari was granted the exclusive sublicense under the Pac-Man copyright and trademark for personal computer products. This agreement also gave Atari the right to sue for infringement in its own name and in the name of Midway, and gave Atari the sole right to control litigation and to retain any sums received as damages in litigation in connection with its enjoyment of the license.

28. By Midway's own allegation (in its Amended Complaint), Atari holds "the exclusive right under all copyrights to the Pac-Man audiovisual work for home video games and personal computers in the United States and its territories," as well as the "exclusive license rights to the trademark Pac-Man for use on or in connection with home video games and personal computers in the United States." Atari has settled with Midway and is no longer a party to this case.

NAMCO'S REQUEST FOR RETURN OF RIGHTS

29. On December 15, 1981, at a meeting between David Marofske, the President of Midway, and Hideyuki Nakajima, the

President of Namco America, the return of certain Pac-Man rights to Namco was discussed. DX___ [05454; DX115] is a letter from Nakajima to Marofske which accurately reflects that meeting and a subsequent telephone conversation.

30. On February 22 and 23, 1982, David Marofske, the President of Midway, and Dennis Wood, the Vice-President and General Counsel of Namco, met to discuss the return of Pac-Man rights to Namco. Wood's March 10, 1982 letter to Marofske (DX___) [DX117] accurately summarizes those meetings.

31. Midway refused to return the non-coin-operated video game Pac-Man rights to Namco.

32. DX___ [05421; DX118] is a March 17, 1982 memorandum written by Midway's President, Marofske, which (in paragraph 5) recognizes that Namco was seeking a return of the Pac-Man rights pursuant to the oral agreement.

33. After Midway refused to return the Pac-Man rights to Namco, Namco requested that it be given a greater share in all Pac-Man merchandising rights in lieu of a return of the rights to Namco. This request was made at a March 16, 1982 meeting between Marofske and Wood as shown in DX___ [1279; DX119.]

34. DX___ [05401; DX148] is a memorandum written by David Marofske on April 9, 1982, summarizing a meeting between Marofske (Midway) and Nakajima and Nakamura of Namco, Ltd.

K.C. MUNCHKIN

35. The K.C. Munchkin home video game was developed for NAPCEC by Averett.

36. In initial discussions between Averett and Ralph "Mike" W. Staup, Staup thought that a maze chase game would be successful only if combined with the Pac-Man name. Averett disagreed, and began work on his own maze chase game.

37. Staup attempted to obtain home video game rights to Pac-Man from Midway, but was unsuccessful because those rights had been promised to Atari.

38. The concept of a maze has been used in computer programs since at least as early as 1958.

39. Atari introduced a maze chase game called "Got'cha" in 1974.

40. Averett's first use of a maze chase game was in 1979 when he developed a game called "Take The Money And Run," a game used with the Odyssey² system.

41. Averett thought that a maze chase game, other than Pac-Man, could be successful in the home video market. Consequently, he continued to develop a maze chase home video game.

42. After Averett finished his initial work on a maze chase home video game, he showed it to NAPCEC.

43. To avoid any potential claim of confusion, NAPCEC told Averett to make changes in the game characters such as changing their color and appearance.

44. The President of NAPCEC in 1981 was named K.C. Meinken.

45. When NAPCEC was deciding on a name for its new home video game, it decided to name the game after its president because the name was "catchy".

46. NAPCEC issued internal instructions to its employees and distributors not to refer to Pac-Man in promoting K.C. Munchkin.

DIFFERENCES BETWEEN PAC-MAN AND K.C. MUNCHKIN

47. The maze in Pac-Man is relatively complex and contains more than two hundred evenly spaced, fixed, round dots. In K.C. Munchkin, the maze is very simple, and contains only 12 randomly spaced, moving, square dots. In Pac-Man, the dots remain fixed. In K.C. Munchkin, the squares are constantly moving and when a square is caught, the remaining squares speed up making them more difficult to overtake.

48. In Pac-Man, the maze is always the same in a given level of play, with the difficulty increasing each time a maze is cleared. In K.C. Munchkin, the player can program any one of several mazes and can program a difficulty factor. In K.C. Munchkin, the maze totally disappears during some levels of play. In one mode, the player can build his own maze; in another, the maze constantly changes. K.C. Munchkin also has a "dead end" maze in which the player can be caught.

49. A central corral to which characters return after being eaten is present in both Pac-Man and K.C. Munchkin. However, the corral is stationary in Pac-Man and rotates in K.C. Munchkin.

50. As shown in some of the exhibits, the characters in K.C. Munchkin are different from those in Pac-Man. Additionally, there are only three "enemy" characters in K.C. Munchkin, while Pac-Man has four. The main character in K.C. Munchkin has personal characteristics (including the ability to smile or frown) while the Pac-Man character does not.

FORERUNNERS TO PAC-MAN

51. As previously stated, maze type computer programs have been in existence since at least 1958. Atari has sold a maze chase game called "Got'cha" since 1974. Averett designed a maze chase game called "Take The Money And Run" for use with the Odyssey² console, which NAPCEC sold in 1979.

52. The "wraparound" feature in video games has been in existence for many years. The video game "Sub Chase," designed by Averett in 1978 for use in the Odyssey² system, contains such a feature. The video game "Invaders From Hyperspace," designed by Averett in 1979 for use in the Odyssey² system, also contains such a feature.

53. Tomy Kogyo Co., Inc. is a Japanese corporation and Tomy Corporation is a related United States Corporation (collectively "Tomy"). Tomy has used a clamshell design and the name "Pac-Man" since at least 1976, in connection with its "Mr. Mouth" toy and other products.

54. Tomy registered its Pac-Man trademark with the U.S. Patent and Trademark Office on June 4 and June 8, 1981. Copies of those registrations are DX____. [02467; 02461.]

55. The dispute between Tomy and Midway regarding rights to Pac-Man led to execution, on November 3 and 9, 1981, of an Assignment and Grant Back License Agreement between Tomy and Midway. In that Agreement, Tomy assigned to Midway all of its trademark rights in Pac-Man. In return, Midway agreed to pay Tomy the sum of \$175,000 and to grant a royalty free license to Tomy to continue using its Pac-Man design (without the name Pac-Man) for toys. A copy of that Agreement is DX____. [13615; DX150.]

56. Concurrently with the execution of the Assignment and Grant Back License, Tomy and Midway entered into a License Agreement by which Midway granted to Tomy certain rights to sell hand-held or table-top Pac-Man non-video games under a royalty settlement. A copy of this Agreement is DX____. [02780.]

57. The Tomy/Namco dispute over rights to the Pac-Man copyright remained unresolved as of February 11, 1982, when Edward D. O'Brian on behalf of Tomy wrote a letter to Jo An Mason, Midway's licensing director, objecting to a proposed Midway license. A copy of this letter is DX____. [DX152.]

58. In 1976, a book entitled The Missing Piece, by Shel Silverstein, was published by Harper & Row. The main character in the book, which is depicted in the cover picture, is almost identical to the Pac-Man character. A copy of this book is DX____.

59. On December 2, 1984, the Chicago Tribune published an advertisement for Shel Silverstein books,

including The Missing Piece. The cover picture from the book was depicted in the advertisement. A copy of the newspaper advertisement is DX ____.

60. In 1970, a book entitled Peanuts Classics, by Charles Schulz, was published by Holt, Rinehart and Winston. In the book, a picture of children dressed as ghosts presents an image almost identical to the ghost pursuer characters in Pac-Man. A copy of this book is DX ____.

DAMAGES

The following facts will be established at trial if liability is found:

61. The expenses of NAPCEC in conjunction with the K.C. Munchkin cartridge include costs of development and production, manufacture, advertising and distribution, overhead, royalties, and other expenses, as will be detailed in exhibits. These costs must be deducted from royalties in any calculation of damages.

62. A substantial portion of the sales of K.C. Munchkin cartridges was attributable to the existence of Odyssey² consoles and demand for any cartridge for use with the Odyssey² console, and to the general popularity of video games, rather than any infringing aspects of K.C. Munchkin.

63. A substantial portion of K.C. Munchkin's popularity and sales was due to non-infringing aspects of the game such as the maze and wraparound features.

64. NAPCEC has paid Atari one million dollars in settlement of Atari's claims in the home video game field, and this amount must be offset from any amount to be awarded to Midway.

NAPCEC'S COUNTERCLAIM

65. On March 5, 1982, the District Court entered an Order enjoining defendants from further sales of the K.C. Munchkin video game cartridge.

66. As a consequence, NAPCEC sustained substantial losses in the following respects:

(A) lost sales of the K.C. Munchkin cartridge;

(B) monetary damages for the cancellation of supply orders for the K.C. Munchkin cartridge;

(C) parts and supplies for the K.C. Munchkin cartridge (including the cartridges themselves) became worthless; and

(D) loss of competitive advantage.

67. In addition, Midway's charges and the lawsuit were widely publicized and have caused NAPCEC damage to its business reputation and goodwill, thereby causing additional losses.

KEY ISSUES OF FACT

The following issues of fact must be decided and are central to a disposition of the case:

1. Whether Namco and Midway had an oral understanding at the time that Namco licensed its Puck-Man copyrights to Midway that Midway would return the non-coin-operated rights to Namco, without compensation, upon request.
2. Whether the Puck-Man audiovisual work was an original work of authorship capable of copyright protection or whether such predecessors as Mr. Mouth, The Missing Piece, Peanuts Classics, and various video games with maze chase and wraparound features were pre-existing works defeating such claims.
3. Whether the K.C. Munchkin home video game cartridge has simulated the non-functional, original design features of the Pac-Man coin-operated video game to such extent as to be a copyright violation.
4. Whether defendants' actions in creating and selling K.C. Munchkin confused or were likely to confuse the public as to the origin, sponsorship or identity of Pac-Man.
5. Whether, by reason of its agreements with Midway, Atari has the sole right to bring, maintain and settle copyright suits for infringement of Pac-Man in the home video game field.

If infringement is found, the following fact question will become important:

6. What portion of defendants' profits is attributable to the infringing aspects of K.C. Munchkin and what portion is attributable to non-infringing aspects such as the general popularity and demand for video game cartridges at the time, the demand specifically for Odyssey² game cartridges, and functional aspects of the game such as the maze.

If no infringement is found, the following fact question will become important:

7. What damages did defendants suffer (including lost sales, expenses and adverse publicity) by virtue of the false allegations in the complaint and consequent injunction.

DEFENDANTS' STATEMENT OF
CONTESTED ISSUES OF LAW

1. Whether Puck-Man or Pac-Man is a wholly original work of authorship copyrightable under the copyright laws of the United States, Title 17, United States Code.
2. Whether Midway's misrepresentations to the Copyright Office concerning its exclusive rights (or lack thereof) in the Pac-Man copyright renders the copyright void and unenforceable.
3. Whether defendants' manufacture and sale of the K.C. Munchkin home video game cartridge is a violation of the Pac-Man copyright and trademark.
4. Whether any of the marketing of K.C. Munchkin was violative of the Illinois Uniform Deceptive Trade Practices Act, Ill.Rev.Stat. ch. 121½, §§311-317, and if so, whether any of the defendants are liable for such violation.
5. Whether any of the defendants have engaged in deceptive or unfair trade practices in violation of Illinois law in their manufacture and sale of K.C. Munchkin.
6. Whether any of the defendants have falsely misrepresented K.C. Munchkin as Pac-Man, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).
7. Whether Midway's conveyance of Pac-Man copyright and trademark rights to Namco (and Namco's sublicense of these rights to Atari) for home video use, and Midway's consequent lack of damages, precludes Midway's claims.

8. Whether Midway's grant to Namco (and Namco's sublicense to Atari) of the right to bring and maintain suits for infringement in the home video field, and Atari's subsequent settlement with defendants, precludes Midway's claims.

9. Whether defendants' profits are available to a copyright "owner" who has exclusively licensed the right to use those copyrights in the allegedly infringed area, where the copyright owner has no actual damages.

10. Whether Midway's grant of copyright and trademark rights and the right to bring and maintain suits, for home video use, deprives Midway of standing.

11. Whether Midway's misrepresentations to the Copyright Office and this Court concerning its rights to the Pac-Man copyright constitute unclean hands barring Midway from recovery.

12. Whether, if Midway's copyright and trademark claims are barred by a lack of standing or unclean hands, its state law claims are pre-empted under federal law.

13. Whether defendants have been damaged by Midway's false assertions in this case, and if so, in what amount.

ATTACHMENT 5A

PLAINTIFF'S LIST OF DEPOSITIONS
TO BE READ INTO EVIDENCE AND
DEFENDANTS' OBJECTIONS THERETO

Plaintiff may read into evidence at trial all or any portion of the following testimony, except for any portion containing colloquy of Counsel unrelated to an objection or to clarification of a question. Plaintiff reserves the right to use the following testimony or any additional testimony for purposes of cross-examination or rebuttal, or to designate such testimony under Rule 32(a)(4), Fed.R.Civ.P., which ought in fairness to be considered with testimony offered by defendants. Plaintiff reserves the right to designate additional portions of deposition or hearing testimony in response to any foundation objection by defendants to any exhibit offered by plaintiff.

Defendants make the following specific objections to plaintiff's deposition and hearing designations, and defendants reserve the right to offer additional portions of deposition or hearing testimony as necessary to preserve fairness, in accordance with Federal Rule of Civil Procedure 32(a)(4). Defendants reserve the right to designate additional portions of deposition or hearing testimony in response to any objections by plaintiff to any exhibit offered by defendants for lack of foundation. Defendants reserve the right to designate deposition or hearing testimony in rebuttal or impeachment of any evidence offered by

plaintiff. Defendants reserve the right to object to plaintiff's use of the prior testimony of a party or agent of a party, except in accordance with Federal Rule of Civil Procedure 32.

1. Plaintiff's Designation of John Charles Wattles Deposition Testimony/Defendants' Objections Thereto

Page 4, line 12 to page 4, line 15	No objection
Page 5, line 11 to page 11, line 11	No objection
Page 12, lines 15 to 18	No objection
Page 12, line 19 to page 14, line 4	Speculation
Page 14, line 5 to page 17, line 3	No objection
Page 20, lines 2-15	No objection
Page 21, line 5 to page 25, line 10	Relevancy; speculation (page 21, lines 13-17)
Page 24, line 11 to page 25, line 10	Speculation; hearsay
Page 27, line 22 to page 39, line 21	Foundation; speculation (page 34, lines 8-16)
Page 44, line 6 to page 46, line 4	No objection
Page 50, line 2 to page 53, line 11	Not testimony (page 50, lines 2-7); speculation (page 52, lines 17-23); speculation (page 53, lines 8-11)
Page 54, line 19 to page 55, line 5	Speculation; foundation
Page 56, line 3 to page 57, line 16	Speculation; hearsay; foundation
Page 58, line 7 to page 58, line 20	No objection
Page 59, line 4 to page 63, line 2	Relevancy; foundation
Page 65, line 19 to page 67, line 9	No objection

John C. Wattles, cont'd.

Page 67, line 10 to page 69, line 7	Foundation; hearsay; mischaracterization of testimony; speculation
Page 69, lines 8 to 24	No objection
Page 70, line 1 to page 72, line 3	No objection
Page 75, lines 1 to 14	Foundation; speculation
Page 75, line 15 to page 76, line 3	No objection
Page 77, line 15 to page 84, line 6	Foundation; mischaracterization (page 80, lines 6-16)
Page 84, line 19 to page 85, line 14	No objection
Page 86, line 2 to page 86, line 12	Relevancy; hearsay
Page 87, line 3 to page 87, line 18	Speculation; hearsay; relevancy
Page 94, line 22 to page 106, line 11	Foundation; speculation; hearsay (page 99, lines 11-19)
Page 106, line 12 to page 109, line 10	No objection
Page 109, line 15 to page 112, line 8	No objection
Page 113, line 14 to page 113, line 21	No objection
Page 114, line 2 to page 115, line 15	No objection
Page 116, line 3 to page 116, line 18	No objection
Page 116, line 22 to page 119, line 19	No objection
Page 119, line 20 to page 120, line 10	No objection
Page 120, line 11 to page 121, line 13	No objection
Page 122, line 3 to page 124, line 6	No objection
Page 126, line 9 to page 127, line 12	Foundation; relevancy
Page 129, line 19 to page 130, line 5	No objection
Page 130, line 19 to page 135, line 14	Relevancy

John C. Wattles, cont'd.

Page 137, line 15 to page 138, line 9 No objection

2. Plaintiff's Designations of Edward Boyle Averett Deposition
Testimony/Defendants' Objections Thereto

Page 5, line 15 to page 105, line 2

DEFENDANTS' OBJECTIONS TO AVERETT
DEPOSITION DESIGNATIONS OF PLAINTIFF

Plaintiff has designated the entire Averett deposition transcript, from page 5 line 15 to page 105 line 2. It is obvious that plaintiff does not intend to offer the entire deposition transcript because said transcript includes colloquies between counsel (e.g. p. 31); objections by plaintiff's counsel; and jokes by plaintiff's counsel. Defendants reserve the right to make objections if and when plaintiff offers specific portions of the deposition. Defendants also reassert all objections made during the deposition and object to the deposition if offered as a whole as irrelevant and immaterial.

3. Plaintiff's Designations of Edward Boyle Averett Hearing
Testimony/Defendants' Objections Thereto

Page 161, line 3 to page 162, line 14	No objection
Page 163, line 19 to page 164, line 17	No objection
Page 170, line 2 to page 173, line 3	No objection
Page 173, line 13 to page 173, line 24	No objection
Page 188, line 9 to page 188, line 15	No objection
Page 189, line 10 to page 189, line 17	No objection
Page 198, line 4 to page 201, line 7	Incomplete

Edward Boyle Averett, cont'd.

Page 202, line 13 to page 205, line 23 No objection
Page 207, line 23 to page 209, line 15 No objection
Page 210, line 4 to page 210, line 9 No objection
Page 210, line 18 to page 211, line 5 No objection
Page 211, line 17 to page 211, line 22 No objection
Page 212, line 15 to page 213, line 21 No objection

4. Plaintiff's Designations of Ralph W. Staup Deposition
Testimony/Defendants' Objections Thereto

Page 6, line 5 to page 17, line 16
Page 20, line 4 to page 128, line 8
Page 134, line 7 to page 233, line 23
Page 238, line 15 to page 290, line 2
Page 292, line 17, to page 298, line 12

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S
DESIGNATIONS OF STAUP'S DEPOSITION TESTIMONY

With minor exceptions, plaintiff has failed to designate precise portions of this deposition testimony. Defendant therefore reaffirms all objections raised at the deposition and reserves the right to make further objections to specific portions of this deposition when designated or offered at trial.

5. Plaintiff's Designations of Ralph W. Staup Hearing
Testimony/Defendants' Objections Thereto

Page 224, line 5 to page 228, line 12 Not testimony (page 24,
lines 19-25)
Page 229, line 7 to page 230, line 11 No objection
Page 230, line 6 to page 230, line 8 Incomplete

Ralph W. Staup Hearing Testimony cont'd.

Page 232, line 11 to page 232, line 17	Incomplete
Page 234, line 1 to page 234, line 12	Incomplete
Page 235, line 3 to page 235, line 11	No objection
Page 236, line 14 to page 236, line 24	No objection
Page 237, line 2 to page 238, line 16	Speculation; hearsay; non-responsive
Page 238, line 26 to page 240, line 12	Hearsay; incomplete
Page 240, line 19 to page 243, line 25	Incomplete; hearsay; speculative; non-responsive
Page 245, line 12 to page 246, line 23	No objection
Page 247, line 14 to page 248, line 4	No objection
Page 248, lines 14 to 20	No objection
Page 249, lines 3 to 22	Relevancy
Page 250, line 8 to page 251, line 9	Incomplete
Page 252, line 17 to page 253, line 12	Relevancy
Page 255, line 22 to page 258, line 23	No objection
Page 258, line 24 to page 259, line 5	Speculation
Page 259, line 6 to page 261, line 8	No objection
Page 263, line 18 to page 264, line 8	No objection
Page 265, lines 4 to 11	Speculation; incomplete

6. Plaintiff's Designations of Dane A. Kite Deposition
Testimony/Defendants' Objections Thereto

Pages 5-23; 164-166

Plaintiff may offer the following testimony in
response to rulings of the Court or evidence offered
by defendants:

Pages 23-163

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S
DESIGNATIONS OF KITE'S DEPOSITION TESTIMONY

In the event that plaintiff offers any portion of the testimony on pages 23-163, defendant reaffirms all objections raised at the deposition and reserves the right to make further objections to specific portions of the deposition when offered.

7. Plaintiff's Designation of Gerald A. Michaelson
Deposition Testimony/Defendants' Objections Thereto

Page 4, line 20 to page 5, line 5	No objection
Page 8, line 23 to page 9, line 2	No objection
Page 13, line 21 to page 15, line 20	No objection
Page 16, line 11 to page 22, line 17	No objection
Page 22, line 18 to page 27, line 7	Relevancy; speculation; mischaracterization
Page 29, line 12 to page 30, line 3	No objection
Page 38, line 12 to page 39, line 2	Relevancy
Page 40, lines 9 to 11	Relevancy
Page 41, line 3 to page 41, line 8	No objection
Page 43, line 19 to page 44, line 3	Speculation; hearsay; foundation
Page 50, line 6 to page 50, line 10	No objection
Page 52, lines 1 to line 5	Incomplete
Page 79, line 21 to page 80, line 12	Foundation; speculation
Page 87, lines 24 to 28	No objection
Page 87, line 29 to page 90, line 13	Relevancy; incomplete
Page 91, line 11 to page 93, line 18	Relevancy
Page 100, line 22 to page 101, line 11	No objection

Gerald A. Michaelson Deposition Testimony, cont'd.

Page 114, line 3 to page 116, line 5 Hearsay; speculation;
best evidence rule

Page 117, line 11 to page 118, line 14 Incomplete

Page 120, line 8 to page 120, line 120 No objection

Page 122, line 11 to page 126, line 8 No objection

8. Plaintiff's Designation of Stephen Rivkin Deposition
Testimony/Defendants' Objections Thereto

Page 3, line 14 to page 13, line 6 Best evidence rule
(page 4, line 23)
Best evidence rule; not
testimony of witness
(page 10, lines 8-16)
Not testimony of witness
(page 12, lines 6-9)

Page 14, line 25 to page 21, line 10 Not testimony of witness
(page 16, lines 23-25);
Speculation
(page 17, lines 14-18);
Relevancy; leading;
foundation (page 17,
line 22 to page 19,
line 15)

9. Plaintiff's Designation of Hideyuki Nakajima
Deposition Testimony/Defendants' Objections Thereto

Page 74, line 24 to page 75, line 9 Hearsay

10. Plaintiff's Designation of Alfred Kahn Deposition
Testimony/Defendants' Objections Thereto

Page 5, line 2 to page 48, line 18

Page 52, line 7 to page 56, line 5

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S
DESIGNATIONS OF KAHN'S DEPOSITION TESTIMONY

Plaintiff has failed to designate precise portions
of this deposition testimony. Defendant therefore reaffirms

all objections raised at the deposition and reserves the right to make further objections to specific portions when designated or offered at trial.

11. Plaintiff's Designation of Rita Hutner Deposition
Testimony/Defendants' Objections Thereto

Page 4, line 8 to page 9, line 16	No objection
Page 10, line 19 to page 12, line 2	Foundation
Page 12, line 8 to page 13, line 16	No objection
Page 13, line 17 to page 13, line 24	No objection
Page 14, line 19 to page 15, line 6	Compound question (page 14, lines 19-23)
Page 15, line 15 to page 16, line 10	Incomplete
Page 17, line 17 to page 18, line 8	Hearsay; speculation; mischaracterization
Page 19, line 11 to page 20, line 4	No objection
Page 22, line 4 to page 22, line 24	Relevancy
Page 23, line 6 to page 24, line 10	Relevancy; hearsay
Page 33, line 1 to page 33, line 17	Relevancy
Page 36, line 5 to page 36, line 12	No objection
Page 45, line 12 to page 46, line 18	Relevancy; opinion; speculation; hearsay; non-responsive
Page 50, line 1 to page 50, line 6	Relevancy
Page 50, line 10 to page 51, line 15	Relevancy

12. Plaintiff's Designation of David M. Arganbright
Deposition Testimony/Defendants' Objections Thereto

Page 4, line 6 to page 4, line 15	No objection
Page 6, line 8 to page 7, line 13	No objection
Page 8, line 9 to page 11, line 21	No objection

David M. Arganbright Deposition Testimony, cont'd.

Page 13, line 17 to page 14, line 20	No objection
Page 16, line 9 to page 23, line 6	No objection
Page 25, line 1 to page 29, line 9	No objection
Page 29, line 21 to page 30, line 9	No objection
Page 32, lines 7 to 17	No objection
Page 32, line 18 to page 34, line 22	Foundation; speculation
Page 42, line 21 to page 44, line 10	No objection
Page 57, line 24 to page 59, line 19	Incomplete
Page 60, line 21 to page 62, line 13	No objection
Page 64, line 18 to page 64, line 21	No objection
Page 69, line 18 to page 70, line 14	Speculation; foundation; opinion; relevancy
Page 71, line 4 to page 71, line 12	Speculation; hearsay
Page 75, line 17 to page 77, line 21	No objection
Page 81, line 25 to page 83, line 19	Mischaracterization (page 82, lines 15-22)
Page 86, line 1 to page 87, line 2	No objection
Page 91, line 23 to page 92, line 2	No objection
Page 92, line 6 to page 92, line 9	Incomplete
Page 92, line 25 to page 95, line 23	Incomplete (page 92, lines 6-9); Relevancy (page 92, line 25 to page 94, line 4); Foundation (page 94, lines 8-12)
Page 97, line 1 to page 97, line 6	Same as below
Page 99, line 19 to page 99, line 24	Incomplete; relevancy; confusing; confidential as agreed
Page 102, line 22 to page 107, line 20	No objection

David M. Arganbright Deposition Testimony, cont'd.

Page 115, line 1 to page 115, line 7	No objection
Page 116, line 15 to page 118, line 3	Relevancy
Page 129, line 3 to page 133, line 4	Speculation (page 129, line 22 to page 130, line 2)
Page 136, line 11 to page 144, line 11	Opinion; speculation (page 138, lines 5-7); Mischaracterization; speculation; foundation (page 139, lines 6-20) Speculation; opinions; foundation (page 140, line 4 to page 144, line 11)

13. Plaintiff's Designation of Harold McDowell Deposition
Testimony/Defendants' Objections Thereto

Page 5, line 8 to page 46, line 11

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S
DESIGNATIONS OF McDOWELL'S DEPOSITION TESTIMONY

Plaintiff has failed to designate specific portions of this deposition. Defendant therefore reaffirms its objections raised at the deposition and reserves the right to raise any further objections when specific portions are designated or offered at trial.

14. PLAINTIFF'S DESIGNATION OF MICHAEL L. MOONE HEARING
TESTIMONY/DEFENDANTS' OBJECTIONS THERETO

Page 19, line 18 to page 20, line 16	No objection
Page 20, lines 17-21	Hearsay; speculation; foundation
Page 27, line 2 to line 16	Hearsay; speculation; foundation

Michael L. Moone Hearing Testimony, cont'd.

Page 43, line 24 to page 45, line 9

Hearsay; speculation;
foundation; relevancy

Page 55, line 20 to page 56, line 20

Hearsay; speculation;
incomplete; confusing;
best evidence rule

Page 95, lines 10 to 14

Hearsay; speculation;
foundation; legal
conclusion

Page 97, line 11 to line 25

Hearsay; speculation;
foundation; relevancy

Page 98, line 19 to page 100, line 10

Hearsay; speculation;
foundation; relevancy;
mischaracterization

15. PLAINTIFF'S DESIGNATIONS OF RONALD GEISE HEARING
TESTIMONY/DEFENDANTS' OBJECTIONS THERETO

Page 274, lines 7 to 25

No objection

Page 275, lines 11 to 17 .

No objection

Page 276, line 19 to page 277, line 17

Incomplete

Page 287, lines 5 to 14

Speculation

16. PLAINTIFF'S DESIGNATIONS OF THOMAS GALLO HEARING
TESTIMONY/DEFENDANTS' OBJECTIONS THERETO

Page 101, line 1 to page 108, line 12

Relevancy; leading

Page 101, lines 19-23

Mischaracterization;
speculation

Page 102, line 4 to page 103, line 1

Hearsay

Page 103, lines 12-19

Hearsay; speculation

Page 104, lines 5-7

Hearsay

Page 104, lines 8-20

Not testimony

Page 104, line 21 to page 106, line 1

Hearsay

Page 106, line 2 to page 107, line 4

Mischaracterization;
hearsay; foundation;
best evidence rule

Thomas Gallo Hearing Testimony, cont'd.

Page 107, lines 12-13

Hearsay

Page 107, lines 14-16

Testimony of attorney

Page 107, line 20 to page 108, line 3

Hearsay; non-responsive

Page 108, lines 10-13

Hearsay; leading

17. PLAINTIFF'S DESIGNATIONS OF WILLIAM KUNKEL HEARING
TESTIMONY/DEFENDANTS' OBJECTIONS THERETO

Page 126, lines 14 to 21

No objection

Page 131, line 15 to page 132, line 15

Foundation; hearsay;
speculation; relevancy

Page 149, lines 2 to 14

Incomplete; foundation;
speculation; best
evidence rule

Page 149, line 15 to page 150, line 16

No objection

Page 151, lines 12 to 17

Incorrect; speculation;
hearsay; best evidence
rule

ATTACHMENT 5B

DEFENDANTS' DESIGNATIONS OF TESTIMONY TO BE READ INTO
EVIDENCE AND PLAINTIFF'S OBJECTIONS THERETO

In addition to the specific objections set forth below, plaintiff reserves its right, pursuant to Rule 32(a)(4), Fed. R. Civ. P., to read such additional portions of testimony as ought in fairness to be considered. Plaintiff also reserves its right to object to defendants' use of the prior testimony of a party or agent of a party, except as provided in Rule 32.

II DEFENDANTS' DESIGNATIONS OF EDWARD AVERETT DEPOSITION TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 5, line 15 to page 5, line 22:

No objection

Page 17, line 4 to page 17, line 12:

No objection

Page 18, line 5 to page 18, line 13:

No objection

Page 23, line 7 to page 24, line 11:

No objection

Page 51, line 6 to page 51, line 24:

Relevance

Page 57, line 5 to page 59, line 23:

No objection

Page 66, line 3 to page 67, line 10:

No objection

Page 67, lines 10 to 12:

No objection

Page 75, line 3 to page 75, line 17:

Non-responsive

Page 77, line 4 to page 77, line 12:

No objection

Object to defendant's use of lines 9-12, on the grounds that defendants have otherwise refused to permit plaintiffs to discover the substance of the discussions at issue.

DEFENDANTS' DESIGNATIONS OF STEPHEN RIVKIN DEPOSITION TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 3, line 14 to page 4, line 9:

No objection

Page 5, line 2 to page 5, line 12:

No objection

Page 13, line 10 to page 14, line 22:

Foundation; relevance

Page 15, line 23 to page 16, line 9:

No objection

Page 16, line 15 to page 16, line 22:

Non-responsive; incomplete;
foundation; speculative

DESIGNATIONS OF DAVID ARGANBRIGHT DEPOSITION TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 4, lines 6 to 15:

No objection

Page 6, line 8 to page 7, line 13:

No objection

Page 20, line 6 to page 20, line 10:

No objection

Page 20, line 23 to page 21, line 22:

No objection

Page 42, line 21 to page 44, line 10:

No objection

Page 67, line 23 to page 68, line 18:

No objection

DEFENDANTS' DESIGNATIONS OF HIDEYUKI NAKAJIMA DEPOSITION TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 4, lines 17 to 25:

No objection

Page 5, line 13 to page 9, line 18:

Relevance; likely to cause confusion

Page 7, line 19 to page 9, line 18:

Relevance; likely to cause confusion

Page 10, line 17 to page 10, line 24:

Relevance; likely to cause confusion

Page 17, line 3 to page 17, line 6:

Relevance; likely to cause confusion; incomplete

Page 19, line 4 to page 19, line 7:

Relevance

Page 19, line 12 to page 19, line 23:

Relevance; likely to confuse

Page 23, line 2 to page 23, line 20:

No objection

Page 24, line 18 to page 27, line 19:

Relevance; likely to confuse
(Page 24, line 23 to page 25, line 15)

Page 32, line 14 to page 33, line 10:

No objection

Page 39, line 5 to page 39, line 17:

Relevance; likely to confuse

Page 43, line 16 to page 43, line 21

No objection

Page 50, line 17 to page 51, line 8:

Relevance

Page 51, lines 13 to 20:

Foundation; relevance

Page 67, line 10 to page 69, line 27:

Best evidence; relevance

Page 74, line 4 to page 74, line 8:

No objection

Page 80, line 4 to page 80, line 9:

No objection

Page 82, line 6 to page 84, line 4:

No objection

Page 87, line 21 to page 88, line 27:

Relevance

Page 113, line 28 to page 114, line 10:

Speculation; parol evidence; hearsay

Page 127, line 10 to page 128, line 10:

Hearsay; no relevant testimony by witness

Page 130, line 16 to page 133, line 11:

Page 134, lines 1 to 8:

Page 142, lines 6 to 18:

Page 145, line 14 to page 145, line 23:

Page 148, line 11 to page 149, line 6:

Page 149, line 13 to page 149, line 19:

Page 150, line 13 to page 151, line 5:

Page 152, line 25 to page 152, line 9:

Page 156, line 2 to page 156, line 20:

Page 157, line 1 to page 157, line 3:

Page 158, line 23 to page 159, line 4:

Page 166, line 5 to page 166, line 10:

Page 166, line 21 to page 167, line 10:

Page 186, line 21 to page 187, line 13:

Page 189, lines 1 to 8:

Page 189, line 13 to page 190, line 8:

Page 190, line 22 to page 191, line 24:

Page 192, line 6 to page 192, line 15:

Page 193, line 13 to page 195, line 18:

Page 197, line 9 to page 198, line 11:

Page 200, line 6 to page 202, line 1:

Page 204, line 7 to page 204, line 18:

Page 207, line 22 to page 208, line 18:

Parol evidence; speculation;
hearsay

Parol evidence rule

Speculation

Speculation; relevance

No objection

No relevant testimony by
witness; hearsay

No relevant testimony by
witness; object to reading
DX 119

Parol evidence; object to
reading DX 119; speculative

Relevance; foundation

Relevance

Relevance; best evidence

Hearsay

Speculation; relevance

Speculation

Incomplete

No objection

No objection

No objection

No objection

No objection

No objection

Mischaracterization;
incomplete

No objection

DEFENDANTS' DESIGNATIONS OF STANLEY JAROCKI DEPOSITION TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

I. Deposition of 12/21/83

Page 4, lines 6 to 11:	No objection
Page 7, line 18 to page 10, line 17:	No objection
Page 14, line 18 to page 15, line 4:	No objection
Page 18, line 22 to page 19, line 9:	No objection
Page 20, line 23 to page 21, line 4:	No objection
Page 21, lines 5 to 17:	Question assumes fact not in evidence
Page 21, line 18 to page 22, line 1:	No objection
Page 40, line 6 to page 40, line 12:	No objection
Page 44, line 21 to page 45, line 8:	No objection
Page 47, line 6 to page 47, line 13:	Best evidence rule
Page 47, line 19 to page 48, line 2:	No objection
Page 51, line 8 to page 52, line 12:	Incomplete (should include through page 53, line 4)
Page 53, line 5 to page 53, line 11:	Foundation; mischaracterization
Page 54, line 8 to page 55, line 8:	No objection
Page 55, line 12 to page 55, line 14:	Ambiguous question; foundation
Page 56, lines 1 to 22:	Incomplete; best evidence; out of context (lines 1 to 5; no question asked) no relevant witness testimony (lines 7 to 8); Mischaracterization
Page 57, line 5 to page 57, line 21:	No objection
Page 61, line 11 to page 62, line 10:	Best evidence rule
Page 62, lines 11 to 14:	Foundation
Page 63, lines 15 to 18:	

page 63, line 23 to page 64, line 1:
Page 67, line 14 to page 68, line 2:
Page 70, line 23 to page 71, line 15:
Page 73, line 21 to page 75, line 16:
Page 90, line 19 to page 91, line 20:
Page 92, line 6 to page 93, line 18:

Incomplete
No objection
No objection
No objection
Fed. R. Evid. 408
Best evidence rule;
ambiguous question;
Fed. R. Evid. 408

II. Deposition of 01/23/84

Page 119, line 23 to page 121, line 4:

No objection

Page 122, line 3 to page 123, line 3:

No relevant testimony
by witness; relevance;
incomplete

Page 127, line 20 to page 127, line 24:

No objection

Page 128, line 11 to page 130, line 24:

No objection

Page 131, line 16 to page 131, line 22:

Speculation

Page 136, line 2 to page 137, line 24:

Relevance; improper
questions (page 137,
lines 10 to 24)

Page 138, line 13 to page 139, line 20:

Relevance

Page 140, line 11 to page 141, line 7:

No objection

Page 141, line 15 to page 142, line 6:

Objection to all
designations from page 141,
line 15 to end

Page 148, line 1 to page 148, line 16:
Page 149, line 3 to page 150, line 4:

Page 151, line 17 to page 151, line 24:
Page 154, line 8 to page 154, line 16:

Incomplete (should include
page 156, line 17 to page
157, line 12; page 159,
line 21 to page 161, line 5;
and page 161, line 17 to
page 162, line 1);
Mischaracterization page
154, line 8 to page 154,
line 16)

Page 162, line 3 to page 162, line 13:

Page 163, line 16 to page 163, line 22:

DEFENDANTS' DESIGNATIONS OF CHARLES PAUL DEPOSITION TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 5, line 21 to page 6, line 9:	No objection
Page 7, line 14 to page 7, line 20:	No objection
Page 8, lines 14 to 17:	No objection
Page 16, line 1 to page 16, line 11:	No objection
Page 19, line 5 to page 19, line 19:	No objection
Page 21, line 7 to page 21, line 9:	No objection
Page 36, line 4 to page 36, line 24:	No objection
Page 120, line 8 to page 121, line 3:	Hearsay; no relevant testimony by witness

DEFENDANTS' DESIGNATIONS OF CHARLES PAUL HEARING TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 115, lines 11 to 19:

No objection

Page 116, line 16 to page 116, line 22:

Relevance

Page 121, line 6 to page 121, line 23:

Relevance

Page 123, line 1 to page 123, line 7:

Relevance

DEFENDANTS' DESIGNATIONS OF DAVID MAROFSKE DEPOSITION TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 4, line 3 to page 4, line 5:	No objection
Page 4, line 10 to page 4, line 11:	No objection
Page 4, line 14 to page 5, line 13:	No objection
Page 5, line 21 to page 7, line 9:	No objection
Page 10, line 14 to page 10, line 19:	No objection
Page 13, line 2 to page 13, line 13:	No objection
Page 14, lines 5 to 6 and lines 10 to 12:	No objection
Page 17, line 17 to page 17, line 21:	No objection
Page 21, line 9 to page 23, line 24:	Ambiguous; compound (Page 21, line 9 to page 22, line 15)
Page 26, line 5 to page 27, line 17:	Fed. R. Evid. 408
Page 36, line 5 to page 36, line 16:	Incomplete
Page 46, line 15 to page 54, line 19:	Best evidence (page 47, line 14 to page 49, line 1); improper, complex and confusing (page 50, line 16 to page 61, line 61)
Page 60, line 18 to page 61, line 1:	No relevant testimony by witness (page 65, line 23 to page 61, line 1)
Page 64, line 13 to page 65, line 9:	No objection
Page 68, line 3 to page 68, line 15:	Object to reading from document not in evidence; hearsay
Page 69, line 17 to page 69, line 24:	No objection
Page 73, line 13 to page 73, line 17:	No objection
Page 75, line 21 to page 77, line 14:	Mischaracterization (Page 75, lines 22 to 23)

Page 78, line 10 to page 82, line 3

No objection

Page 82, line 15 to page 83, line 17:

No objection

Page 85, line 21 to page 87, line 19:

No objection

Page 85, line 21 to page 87, line 19:

No objection

Page 95, line 12 to page 96, line 15:

Object to all references
to DX 123

Page 101, line 2 to page 102, line 18:

Mischaracterization
(Page 102, lines 4 to 8)

Page 110, line 16 to page 111, line 18:

No objection

Page 114, line 1 to page 114, line 16:

Relevance (lines 1 to 3)

Page 116, line 8 to page 116, line 19:

Speculation .

Page 118, line 2 to page 119, line 9:

Speculation; argumentative
(Page 118, lines 2 to 20)

DEFENDANTS' DESIGNATIONS OF HENRY ROSS DEPOSITION TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 4, line 16 to page 4, line 20:	No objection
Page 5, line 9 to page 5, line 15:	No objection
Page 6, line 8 to page 6, line 14:	No objection
Page 7, line 7 to page 7, line 16:	No objection
Page 8, line 16 to page 8, line 21:	No objection
Page 9, line, 8 to page 9, line 13:	No objection
Page 10, line 9 to page 10, line 18:	No objection
Page 16, line 11 to page 17, line 2	Relevance; foundation
Page 18, line 8 to page 19, line 4:	No objection
Page 22, line 4 to page 22, line 23:	No objection
Page 26, line 2 to page 27, line 7:	No objection
Page 34, line 2 to page 34, line 14:	Compound question (Lines 2 to 9)
Page 37, line 6 to page 37, line 12:	Relevance
Page 40, line 2 to page 41, line 9:	No objection
Page 53, line 22 to page 54, line 4:	No objection

DEFENDANTS' DESIGNATIONS OF JOHN C. WATTLES DEPOSITION TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 4, line 12 to page 4, line 15:

No objection

Page 5, line 11 to page 6, line 6:

No objection

Page 136, line 6 to page 137, line 11:

No objection

DEFENDANTS' DESIGNATIONS OF RALPH STAUP HEARING TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 224, line 10 to page 224, line 18:	No objection
Page 225, line 5 to page 226, line 17:	No objection
Page 229, line 7 to page 230, line 11:	No objection
Page 231, line 9 to page 231, line 11:	No objection
Page 232, line 10 to page 236, line 13:	Opinion; narrative; foundation
Page 236, line 14 to page 238, line 10:	No objection
Page 238, line 26 to page 248, line 20:	No objection
Page 263, line 18 to page 264, line 17:	Foundation

DEFENDANTS' DESIGNATIONS OF RALPH STAUP DEPOSITION TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 4, line 3 to page 4, line 5:	No objection
Page 7, line 15 to page 8, line 18:	No objection
Page 9, line 19 to page 10, line 1:	No objection
Page 20, line 4 to page 21, line 13:	No objection
Page 23, line 24 to page 24, line 24:	No objection
Page 30, line 14 to page 37, line 3:	No objection
Page 37, line 9 to page 41, line 1:	No objection
Page 43, line 19 to page 44, line 1:	Mischaracterization
Page 46, line 4 to page 47, line 2:	Mischaracterization
Page 57, line 9 to page 58, line 2:	No objection
Page 66, line 6 to page 67, line 9:	No objection
Page 72, line 3 to page 73, line 22:	Hearsay; foundation; conjecture; inadmissible under Fed. R. Evid. 602
Page 74, line 1 to page 77, line 21:	Narrative; conjecture
Page 86, line 5 to page 87, line 18:	No objection
Page 125, line 17 to page 126, line 5:	No objection
Page 179, line 15 to page 179, line 16:	Incomplete
Page 215, line 23 to page 216, line 14:	No objection
Page 217, line 16 to page 218, line 9:	Incomplete
Page 291, line 4 to page 292, line 8:	Foundation; speculative; relevance; hypothetical; inadmissible under Fed. R. Evid. 701

3. DEFENDANTS' DESIGNATIONS OF EDWARD AVERETT HEARING TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 161, line 3 to page 162, line 14:	No objection
Page 164, line 1 to page 165, line 20:	Relevance
Page 168, line 1 to page 169, line 17:	Relevance
Page 170, line 2 to page 173, line 12:	No objection
Page 174, line 9 to page 176, line 19:	No objection
Page 177, line 6 to page 186, line 17:	Narrative; opinion; foundation
Page 189, line 25 to page 192, line 3:	Narrative; opinion; foundation; conjecture
Page 192, line 10 to page 193, line 10:	No objection
Page 194, line 24 to page 195, line 23:	No objection
Page 196, line 1 to page 196, line 17:	No objection
Page 202, line 7 to page 202, line 12:	Relevance
Page 210, line 18 to page 211, line 16:	No objection
Page 215, line 23 to page 216, line 16:	No objection
Page 218, line 17 to page 218, line 19:	No objection
Page 219, line 2 to page 219, line 10:	No objection

DEFENDANTS' DESIGNATIONS OF MICHAEL MOONE HEARING TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 19, line 18 to page 20, line 5:	No objection
Page 41, line 3 to page 41, line 24:	No objection
Page 50, line 22 to page 51, line 1:	Relevance
Page 52, line 5 to page 52, line 9:	Relevance
Page 59, line 8 to page 60, line 1:	No objection
Page 71, line 14 to page 73, line 5:	No objection
Page 73, line 14 to page 73, line 21:	No objection
Page 74, line 9 to page 78, line 9:	No objection
Page 93, line 10 to page 94, line 3:	Relevance

DEFENDANTS' DESIGNATIONS OF KUNKEL HEARING TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 126, line 20 to page 126, line 21:	No objection
Page 128, line 9 to page 128, line 19:	No objection
Page 129, line 5 to page 129, line 17:	No objection
Page 131, line 15 to page 131, line 23:	No objection
Page 134, line 5 to page 135, line 6:	Foundation; opinion; conjecture
Page 137, line 23 to page 143, line 2:	Relevance; opinion; conjecture
Page 144, line 18 to page 145, line 9:	Relevance; opinion; conjecture

DEFENDANTS' DESIGNATIONS OF RONALD GIESE HEARING TESTIMONY/
PLAINTIFF'S OBJECTIONS THERETO

Page 274, line 7 to page 275, line 5:	No objection
Page 276, line 19 to page 278, line 12:	No objection
Page 278, line 21 to page 279, line 9:	Foundation
Page 284, line 14 to page 285, line 13:	No objection

Attachment 6

PLAINTIFF'S STATEMENT OF SPECIAL DAMAGES

Plaintiff seeks damages in the amount of defendants' gross revenues from the infringement, including its gross revenues received from sales of the K.C. Munchkin cartridge (\$7,755,497) and gross revenue received from resulting sales of Odyssey², video game consoles, minus deductible expenses or elements of profit attributable to factors other than the copyrighted work, as proved by defendants.

Plaintiff did not receive defendants' Statement of Special Damages in sufficient time to incorporate its objections into the pretrial order. Plaintiff therefore reserves all objections it may have thereto.

Attachment 6

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S
STATEMENT OF SPECIAL DAMAGES

Defendants object to plaintiff's Statement of Special Damages as incomplete and non-responsive to the requirements of the pretrial order. Defendants also object on the basis that the type of damages stated therein is unavailable and inappropriate in this case.

ATTACHMENT 6

DEFENDANT-COUNTERPLAINTIFF'S
STATEMENT OF SPECIAL DAMAGES

Defendants-counterplaintiffs seek damages caused by plaintiff's wilful and wrongful allegations against them. For defendant Averett these damages include injury to reputation and lost royalties from the sales of K.C. Munchkin cartridges. For defendant Park, these damages include injury to business reputation and goodwill and lost profits from sales of K.C. Munchkin cartridges. For defendant NAPCEC, these damages include injury to business reputation and goodwill, lost profits from the sales of K.C. Munchkin cartridges, the cost of cancelling or otherwise disposing of contracts for the purchase of cartridges or components thereof for K.C. Munchkin, the cost of cartridges and components which had to be disposed of and the cost of disposal, the cost of advertising, the use of which was rendered valueless because of the injunction, and other costs associated with plaintiff's allegations and the issuance of the injunction. In addition, all defendants seek attorneys' fees and the costs of this suit (including in the Court of Appeals).

ATTACHMENT 7

No claims or defenses have been waived or
abandoned.

Attachment 8

PLAINTIFF'S EXHIBITS RECEIVED INTO EVIDENCE

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
PX 1		Certificate of Copyright Registration (PA 83-768) for PAC-MAN audiovisual work issued to Midway Mfg. Co.	No objection
PX 2		10/10/80 Assignment of U.S. Copyright for PAC-MAN audiovisual work from Namco Limited to Midway Mfg. Co., effective 8/16/80.	No objection
PX 3		4/27/81 License agreement between Namco and Atari for PAC-MAN home video and personal computer use.	No objection
PX 4		Midway's PAC-MAN promotional brochure.	No objection
PX 7		K.C. Munchkin video game cartridge.	No objection
PX 16/DX14		PAC-MAN arcade model video game.	No objection
DX 101		8/16/80 Preliminary Agreement between Midway and Namco for Pac-Man	No objection
DX 104		11/4/80 License Agreement between Namco and Midway for Pac-Man	No objection

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
	Dx 100B	06/18/81 Addendum to Agreement between Namco and Midway, effective as of 4/27/81, whereby Midway grants Namco an exclusive license for Pac-Man in the consumer video field	No objection
	Dx 105	7/24/81 Second Addendum to Agreement between Namco and Midway, amending a paragraph relating to the term of the 11/4/80 agreement	No objection
	PX 113	Undated document entitled Urgent Legal Notice; do not refer to any other similar games	No objection
	PX 133	Document dated July 6, 1978, entitled, "Option to Purchase Rights to Microprocessor Video Game Software"	No objection
	PX 134	George R. Pettit's (Magnavox) September 12, 1978, letter to Edward Averett (Averett & Associates) re: desire to execute option granted under previous agreement dated July 6, 1978, Bates No. 000073 (attached: document dated September 1, 1978, entitled "Video Game Software License Agreement"	No objection
	Dx 108	8/1/82 Addendum to 11/4/80 Namco/Midway	No objection

Attachment 9

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S EXHIBITS

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
PX 5		Atari advertisement appearing in <u>Newsweek</u> magazine, 11/16/81.	Relevancy; Foundation; Hearsay
PX 6		North American Philips Consumer Electronics Corp. advertisement for K.C. Munchkin video game appearing in <u>Newsweek</u> magazine, 11/16/81.	Relevancy; Foundation; Hearsay
PX 8		Video tape comparing PAC-MAN and K.C. Munchkin.	Defendants reserve the right to make objections when such exhibits are disclosed.
PX 9		Newspaper advertisement, Minnesota Fats, appearing 11/13/81, <u>Chicago Sun-Times</u> .	Relevancy; Foundation; Hearsay
PX 10		Newspaper advertisement, Minnesota Fats, appearing 11/20/81, <u>Chicago Tribune</u> .	Relevancy; Foundation; Hearsay
PX 11		Newspaper advertisement, Minnesota Fats, appearing 11/22/81, <u>Chicago Tribune</u> .	Relevancy; Foundation; Hearsay
PX 12		Newspaper advertisement, Polk Bros., appearing 11/22/81, <u>Chicago Tribune</u> .	Relevancy; Foundation; Hearsay

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
	PX 17	Advertisement, United Mainliner magazine.	Relevancy; Foundation; Hearsay
	PX 18	Mail order advertisement, Video Etc., appearing 11/81.	Relevancy; Foundation; Hearsay
	PX 19	Newspaper advertisement, Minnesota Fats, appearing 11/27/81, <u>Chicago Tribune</u> .	Relevancy; Foundation; Hearsay
	PX 20	Advertisement appearing 11/26/81, <u>Los Angeles Times</u> .	Relevancy; Foundation; Hearsay
	PX ____	Trademark Registration No. 1,259,524	Foundation; Hearsay
	PX ____	Trademark Registration No. 1,230,042	Foundation; Hearsay
	PX ____	Trademark Registration No. 1,260,102	Foundation; Hearsay
	PX ____	7/27/81 License Agreement between Midway and Coleco for hand-held or table top version of Pac-Man	Relevancy
	PX ____	Still photographs of Pac-Man and K.C. Munchkin in various stages of play	Defendants reserve the right to make objections when such exhibits are disclosed.
	PX ____	A video cartridge entitled "early version" of K.C. Munchkin	Defendants reserve the right to make objections when such exhibits are disclosed.

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
PX ____		Still photographs of "early version" of K.C. Munchkin game	Defendants reserve the right to make objections when such exhibits are disclosed.
PX ____		A videotape of the PAC-MAN game in action that was submitted to the copyright office in conjunction with Application for Copyright Registration PA 83-768	Defendants reserve the right to make objections when such exhibits are disclosed.
PX ____		The Video Game Industry, by Christopher D. Kirby, Bernstein Research (December 28, 1982)	Defendants reserve the right to object to specific portions of this exhibit, as offered.
PX ____		The Coleco Table-top version of the Pac-Man game.	Relevancy; Foundation
PX ____		A mug decorated with Pac-Man characters.	Relevancy; Foundation
PX ____		Plush pajama bag shaped like Pac-Man.	Relevancy; Foundation
PX ____		Milton Bradley Pac-Man Board Game.	Relevancy; Foundation
PX ____		Pac-Man gift wrap.	Relevancy; Foundation
PX ____		Pac-Man jigsaw puzzle.	Relevancy; Foundation
PX ____		Box of Pac-Man cereal.	Relevancy; Foundation

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
PX —		Pac-Man Bubble Gum Ball Machine.	Relevancy; Foundation
PX —		Article entitled "Pinky, Blinky, Inky, Clyde Taking Over" from 2/19/82 Edition of the <u>Wichita Eagle Beacon</u> .	Defendants reserve the right to make objections when such exhibits are disclosed.
PX —		Cover of 5/22/82 Cashbox News- paper picturing Pac-Man game, Stanley Jarocki, and Charles Farmer.	Defendants reserve the right to make objection when such exhibits are disclosed.
PX —		Cover of 10/25/82 Time Magazine, depicting Pac-Man in a political context, illustrating an article about political action committees.	Defendants reserve the right to make objections when such exhibits are disclosed.
Kahn Ex. 2		Coleco Catalogue	Defendants reserve the right to make objections when such exhibits are disclosed.
Kahn Ex. 3		Consumer Study	Defendants reserve the right to make objections when such exhibits are disclosed.

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
	Kahn Ex. 4	Videotape	Relevancy; Foundation; Hearsay; defendants reserve the right to make additional objections when such exhibits are disclosed.
	Kahn Ex. 5	Videotape	Relevancy; Foundation; Hearsay; defendants reserve the right to make additional objections when such exhibits are disclosed.
PX 20		Memorandum from E. Collins (NAPCEC) to M. Staup, et al., dated 7/24/84 re: scheduling of AC9435 Game Cartridge	Relevancy
PX 21		Undated document entitled "Odyssey Game Development Schedule" for K.C. Munchkin, Model No. AC 9435	Relevancy; Hearsay
PX 22		8/3/81-Magnavox Form 10479 Request for Temporary Waiver of Engineering Approval	Relevancy
PX 23		8/3/81-Magnavox Form 10480 Request for Temporary Waiver of Engineering Approval	Relevancy
PX 24		8/4/81 Memo - New Odyssey Game w/612307-5 ROM	Relevancy

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
PX 25		8/21/81 Letter-Re: Data pattern of G.I. 9332B-2179 (Magnavox 612307-5) is acceptable for Eprom test	Relevancy
PX 26		8/31/81 Memo - Best shipping promise from suppliers after code pattern revision	Relevancy
PX 66		Undated handwritten note from John Wattles to "Paula," with attached memorandum, dated 7/2/81, from John Wattles to Jerry Michaelson, re: video game expenditure information	Relevancy; Hearsay
PX 67		John Wattles' (Campbell-Ewald) July 15, 1981, memorandum to Rita Hutner (Campbell-Ewald) re: expenditure report of major Magnavox (attached, with July 22, 1981, cover memorandum from Althea J. Underwood to R. Paschke (Campbell-Ewald)	Relevancy; Hearsay
PX 68		John C. Wattles' (Campbell-Ewald) September 15, 1981, conference report to G. Michaelson, et al., re: September 10, 1981, meeting concerning K.C. Munchkin and Odyssey	Relevancy; Hearsay

<u>Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
	PX 69	Undated audio script for K.C. Munchkin	Relevancy; Foundation; Hearsay
	PX 70	2-page handwritten notes dated 9/24 re: "K.C. intro" (author unidentified)	Relevancy; Foundation; Hearsay
	PX 71	Xerox copy of K.C. Munchkin package with handwritten notes re: advertising angles	Relevancy; Foundation; Hearsay (print and handwriting)
	PX 72	Campbell-Ewald draft dated 9/24/81 of K.C. Munchkin Magazine Advertisement text	Relevancy; Draft; Hearsay; Foundation
	PX 73	Campbell-Ewald rough draft dated 9/24/81 of K.C. Munchkin Magazine advertisement text with handwritten notes	Relevancy; Draft; Hearsay; Foundation
	PX 74	Campbell-Ewald rough draft dated 9/24/81 of K.C. Munchkin Magazine advertisement text (single-spaced format)	Relevancy; Draft; Hearsay; Foundation
	PX 76	John C. Wattles (Campbell-Ewald) Creative Planning Request to Karen Baehr (Campbell-Ewald) dated 10/21/81 re: K.C. Munchkin advertising promotion	Relevancy; Hearsay

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
PX 77		John C. Wattles (Campbell-Ewald) 10/26/81 conference report for meeting of 10/15/81 re: K.C. Munchkin Odyssey main frame advertising tie-in	Relevancy; Hearsay; Foundation (handwriting)
PX 78		John C. Wattles (Campbell-Ewald 10/20/81 Creative Planning Request re: K. Munchkin [sic] Dealer TV spot	Relevancy; Hearsay
PX 80		Campbell-Ewald rough draft of Radio-Television script with handwritten notes dated 11/15/81 re: K.C. Munchkin advertisement	Relevancy; Hearsay; Draft
PX 81		J. C. Wattles (Campbell-Ewald) 11/12/81 Creative Planning Request re: K.C. Munchkin/C.E.S.	Relevancy; Hearsay
PX 82		Campbell-Ewald Consumer Media Plan recommendation dated 11/19/81 re: advertising expenditures	Relevancy; Hearsay; Foundation
PX 83		R. Paschke (Campbell-Ewald) inter-office memorandum to J. Wattles dated 1/1/82 re: media recommendation for Odyssey 2 from February to July, 1982	Relevancy; Hearsay

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
PX 84		John C. Wattles (Campbell-Ewald) conference report dated 1/13/82 re: February K.C. Munchkin campaign	Relevancy; Hearsay
PX 85		John C. Wattles (Campbell-Ewald) conference report dated 1/14/82 re: Michaelson suggestions for K.C. Munchkin media plan	Relevancy; Hearsay; Foundation (handwriting)
PX 86		John C. Wattles (Campbell-Ewald) conference report dated 1/14/82 re: further developments in the K.C. Munchkin and Odyssey Z campaigns	Relevancy; Hearsay
PX 87		Creative Planning Request, prepared by John C. Wattles, dated 1/18/82, revised 1/22/82	Relevancy; Hearsay
PX 88		R.H. Shirmer (Campbell-Ewald) inter-office memorandum to R.D. O'Connor dated 1/22/82 re: Frank Lann's letter of December 28 to Myr Jones and success of Odyssey campaign	Relevancy; Hearsay; Foundation
PX 90		Campbell-Ewald Consumer Advertising Recommendation dated 2/82 re: Odyssey Z marketing and comparison with Atari	Relevancy; Hearsay; Foundation

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
PX 94		John C. Wattles (Campbell-Ewald) 2/15/82 Creative Planning Request re: 1982 Consumer Advertising	Relevancy; Hearsay
PX 100		Campbell-Ewald Recommendation for Cartridge Maming, dated 4/82	Relevancy; Hearsay; Draft
PX 114		Conference report prepared by John C. Wattles dated January 18, 1982.	Relevancy; Hearsay; Foundation
PX 115		Memorandum from G. A. Michaelson to D. M. Arganbright, dated 1/26/82 re: February television purchase	Relevancy
PX 132		Affidavit of Edward Boyle Averett III, in re Atari, et al. v. <u>Philips Electronics and Associated Industries Limited, et al.</u> (United Kingdom)	Portions thereof may be irrelevant or hearsay depending on their use. Defendants reserve the right to object as portions are offered.

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
PX 135		<p>Thomas M. Hafner's (Magnavox) February 18, 1981, letter to Edward Averett (Averett and Associates) re: confirmation of license agreements dated July 6, 1978, and September 1, 1978, and letter amendment dated May 8, 1980, Bates Nos. 000020-000021 (attached: Robert J. McCarthy's (Magnavox) January 5, 1982, letter to Edward Averett re: confirmation of license agreements dated July 6, 1978, and September 1, 1978, and letter amendments dated May 9, 1980, and February 18, 1981)</p>	<p>Relevancy</p>
PX 136		<p>Robert J. McCarthy's (Magnavox) January 5, 1982, letter to Edward Averett (Averett and Associates) re: confirmation of license agreements dated July 6, 1978 and September 1, 1978, and letter amendments dated May 8, 1980, and February 18, 1981</p>	<p>Relevancy</p>
PX 137		<p>Charles E. Quarton's (N.A.P. Consumer Electronics) March 4, 1982, letter to Edward Averett (Averett and Associates) re: NAPCEC indemnity of Averett</p>	<p>Relevancy</p>

Previous
Designation

FN 138

Description

L. Schumann's (N.A.P. Consumer Electronics) July 17, 1981, memorandum to Edward Averett et al., re: introduction of newest arcade cartridge and meeting to discuss same

Objection

Relevancy; Foundation

FX 139

Document entitled, "Odyssey Game Development Schedule," re: K.C. Munchkin with handwritten notes

Same as PX 21.
Relevancy; Hearsay

PX 140

L.E. Greene's (N.A.P. Consumer Electronics) January 22, 1982, letter to Edward Averett (Averett and Associates) re: royalty payment as of January 22, 1982, per September 1, 1978, agreement, Bates No. 000100 (attached: L.E. Greene's letters to Edward Averett dated April 21, 1982 (Bates No. 000101), July 26, 1982 (Bates No. 000102), October 25, 1981 (Bates No. 000103), January 31, 1983 (Bates No. 000104) and February 17, 1983 (Bates Nos. 000105-000106) re: royalty payments as of date of each letter per September 1, 1978 agreement)

Relevancy

Trial
Exhibit No.

Previous
Designation

Description

Objection

PX 149

Letter from Gerald A. Michaelson (NAPCEC) to "Editor," dated 10/8/81 re: K.C. Munchkin introduction, with enclosed 10/8/81 NAPCEC news release

Foundation; Hearsay;
Relevancy

PX 150

Memorandum from G.A. Michaelson to L.J. Schumann, et al., dated 10/13/81 re: reports on orders for K.C. Munchkin

Relevancy; Hearsay

PX 151

NAPCEC January 19, 1982, news release datelined Knoxville, TN re: "K.C. Munchkin" video game cartridge breaks Odyssey sales records"

Same as PX 115.
Relevancy

PX 152

Gerald Michaelson's NAPCEC January 26, 1982, memorandum to David Arganbright re: finalizing February television purchase for Odyssey

Relevancy; Hearsay;
Foundation; Authentication

PX 153

C.B. Heffron (Magnavox) 5/19/81 inter-office memorandum to all attendees of May 14-15, 1981 Video Games Review Meeting re: N.V. Philips and NAPCEC Video Games Review Meeting

Relevancy; Hearsay

PX 154

J. Trout (Trout & Ries) letter dated 11/16/81 to G. Michaelson (NAPCEC) re: proposed positioning project for N.A.P. Consumer Electronics with handwritten revisions dated 1/4/82

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
	PX 155	Pamphlet (undated) prepared from slide presentation by Trout & Ries Advertising for NAPCEC, entitled The Video Game Wars	Relevancy; Hearsay
	PX 156	C.B. Helfron (NAPCEC) inter-office memorandum dated 7/6/81 re: meeting on video game status	Relevancy; Foundation
	PX 157	L. Schumann (NAPCEC) inter-office memorandum dated 7/17/81 re: meeting to coordinate effort on new video cartridge	Relevancy; Hearsay
	PX 160	Memorandum from L. Schumann, dated 11/20/81 re: Estimated P&L K.C. Munchkin, November 20, 1981	Relevancy; Foundation; Hearsay; Speculation
	PX 161	Revised P&L for Odyssey (Reflecting Effect of Removal of K.C. Munchkin)	
	PX 162	Memorandum from M. Staup and L. Schumann, dated 11/23/81 re: K.C. Munchkin Summary of Losses	Relevancy; Speculation
	PX 180	Notice of Deposition of North American Philips Consumer Electronics Corporation pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure	Relevancy

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
	PX 181	Index of requested financial information and corresponding exhibits numbers	Relevancy; Foundation; Incomplete
	PX 1B2	NAP chart of K.C. Munchkin P&L for October 1981-March 1982	Relevancy; Incomplete
	PX 203	Odyssey ² print advertisement for K.C. Munchkin	Relevancy; Foundation
	PX —	Letter, NAPCEC Production Number 001468, from John Vittli, stamped 00011 SEP1081, addressed to Odyssey II.	Relevancy; Foundation; Hearsay; Authenticity
	PX —	Letter, NAPCEC Production Number 001468, from Marc LaSalle, stamped 00018 SEP1181.	Relevancy; Foundation; Authenticity; Hearsay
	PX —	Letter, NAPCEC Production Number 001468, from Lisa Reid, stamped 00015 SEP1781.	Relevancy; Foundation; Authenticity; Hearsay
	PX —	Letter, NAPCEC Production Number 001481, from Johnny Hildref [sic], stamped SEP301982.	Foundation; Authenticity; Hearsay
	PX —	Letter, NAPCEC Production Number 001511, from Jaweed Pervaaz, dated December 13, 1982.	Foundation; Hearsay; Authenticity
	PX —	Letter, no NAPCEC Production Number, from Jerry Boldt, stamped 00024 OCT3081	Foundation; Hearsay; Authenticity; Incomplete

Trial Exhibit No.	Previous Designation	Description	Objection
PX 186	PX 186	Letter, NAPCEC Production Number 001459, from Jerry Boldt, dated November 28, 1981.	Foundation; Hearsay; Authenticity; Incomplete
PX 186	PX 186	Nakajima Affidavit 1982 A No. 1897.	Foundation; Authenticity; Hearsay
Plaintiff may offer the following documents in response to rulings of the Court or in response to evidence offered by Defendants:			
PX 183	PX 183	NAP Consumer Electronics Corporation Profit-Loss comparison for K.C. Munchkin for 1981	If plaintiff offers exhibits 183 through 202, defendant may object to each of the exhibits on the grounds of relevancy and incompleteness, depending on when, how and for what purpose each such exhibit is introduced.
PX 184	PX 184	NAP Consumer Electronics Corporation Profit-Loss comparison for K.C. Munchkin for 1982 (Bates Nos. 100164-65)	See objection to PX 183.
PX 185	PX 185	Magnavox Net Sales Chart for month ending 1/24/81 through 12/31/81 re Audio-Visual products	See objection to PX 183.
PX 186	PX 186	NAP net sales chart for month ending 1/23/82 through 12/31/82 re Audi-Visual products (Bates Nos. 100211-237)	See objection to PX 183.

<u>Trial Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
PX 187		NAP Net Sales Chart for month ending 1/29/83 through 5/28/83 re Audio-Visual products	See objection to PX 183.
PX 188		Detail Listing of Month Sales for 11/81	See objection to PX 183.
PX 189		Detail Listing of Monthly Sales for 12/81	See objection to PX 183.
PX 190		Detail Listing of Monthly Sales for 1/82	See objection to PX 183.
PX 191		Detail Listing of Monthly Sales for 2/82	See objection to PX 183.
PX 192		Detail Listing of Monthly Sales for 3/82	See objection to PX 183.
PX 193		Sales Journal - Detail for 1/82	See objection to PX 183.
PX 194		Sales Journal - Detail for 2/82	See objection to PX 183.
PX 195		Sales Journal - Detail for 3/82	See objection to PX 183.
PX 196		Active Model Cost Book dated 5/17/82	See objection to PX 183.
PX 197		L. Schumann (NAP) K.C. Munchkin Expenditures and Purchasing Commitments as of 11/20/81	See objection to PX 183.
PX 198		Magnavox Profit and Loss Schedule Charts for each aspect of production and marketing	See objection to PX 183.

Trial
Exhibit No.

Previous
Designation

Description

PX 199

C. Quarton (NAP Consumer Electronics Corp. Patent Dept.) interoffice memorandum dated 1/7/81 to M. Greiner with handwritten notes re amendment to software license with E. Averett (attached: Quarton letter to E. Averett dated 12/2/82 re confirmation of agreement)

Objection

See objection to PX 183.

PX 200

J. McPhail (NAP) memorandum to G. Dillan dated 7/7/83 re warranty accrual rate on Odyssey cartridges (attached: C. Kyker memorandum dated 7/7/82 re chart of warranty accrual rates)

See objection to PX 183.

PX 201

Magnavox and NAP Checks to Campbell-Ewald with Campbell-Ewald invoices attached

See objection to PX 183.

PX 202

1981-82 K.C. Munchkin units chart dated 7/14/83

See objection to PX 183.

DX 121

7/10/81
Nakajima to Jarocki
telex

Hearsay; relevance

DX 151

1/12/82
Supplemental Agreement
Re Pac-Man

Relevance

H 13642

6/17/82
Katz letter re Cornnuts

Relevance (enclosure:
hearsay, relevance)

Plaintiff reserves its right to inspect and to offer into evidence the full and complete settlement agreement entered into by defendants and Atari, together with any additional evidence regarding the value of any consideration received or exchanged by any party to that agreement, if defendants assert that the relief to which plaintiff is entitled should be offset or reduced by all or any part of the consideration exchanged pursuant to that agreement.

Plaintiff and defendants reserve their right to use in any manner permissible under the Federal Rules of Evidence and Rule 65, Fed. R. Civ. P., the trial exhibits previously offered and admitted in this proceeding.

Plaintiff reserves its right to amend this list to add to its list of exhibits some or all of the slides described at p. 54 of the deposition of Rita Hutner that are presently in the custody of defendant NAPCEC.

ATTACHMENT 10
DEFENDANTS' EXHIBITS RECEIVED
INTO EVIDENCE

<u>al</u> <u>1. No.</u>	<u>Previous</u> <u>Designation</u>	<u>Description</u>	<u>Objection</u>
	DX2	Odyssey,2 Console	
	DX3	K.C. Munchkin Rules	No objection
	DX6-13	Photographs of Head-On	No objection
	DX15	Take The Money and Run Cartridge	No objection
	DX16	Take The Money and Run Rules	No objection
	DX17	K.C. Munchkin Cartridge	No objection
	DX18	Invaders from Hyperspace Cartridge	No objection
	DX19	Subchase/Armored Encounter Cartridge	No objection
	DX20	NAPCEC Catalogue	No objection
	DX21	10/27/81 Hafner Memorandum	No objection
	DX22	11/10/81 Dealer Letter	No objection
	DX24	10/27/81 Hafner Memorandum to Managers	No objection
	DX26	Hafner Memorandum to Odyssey Dealers	No objection
	DX100	4/27/81 Namco/Atari Sublicense	No objection
	DX100A	4/27/81 Namco/Atari License Agreement	No objection
	DX100B	4/27/81 Namco/Midway Addendum	No objection

ATTACHMENT 10

DEFENDANTS' EXHIBITS RECEIVED
INTO EVIDENCE

<u>Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
	DX100C	11/16/81 Namco/Midway Third Addendum	No objection
	DX101	8/16/80 Namco/Midway Preliminary Agreement	No objection
	DX102	10/10/80 Namco/Midway Assignment of Copyrights	No objection
	DX103	10/11/80 Midway/Namco Letter re DX102	No objection
	DX104	11/4/80 Namco/Midway License Agreement	No objection
	DX109 (PX3)	4/27/81 Namco/Atari Assignment of Copyrights	No objection
	PX1	Copyright Application	No objection
	PX4	Pac-Man Rules	No objection
	PX16	Pac-Man Arcade game	No objection
	PX133	7/6/78 Averett/Magnavox Option to Purchase	No objection
	PX134	9/1/78 Averett/Magnavox Video Game License	No objection
	PX149	10/8/81 NAPCEC Press Release on K.C. Munchkin	No objection

ATTACHMENT 11

PLAINTIFF'S OBJECTIONS TO EXHIBITS OFFERED
BY DEFENDANTS

<u>Trial Exh. No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
DX33		Pac-Man Cartridge	Relevance
DX34		Atari Catalogue	Relevance
DX35		Pac-Man Instructions	Object to misdescription of document; relevance
DX110		12/9/81 Namco/Atari License Agreement	Relevance
DX111		5/28/82 Namco/Atari License Agreement	Relevance; hearsay
DX113		2/3/82 Nakajima/Marofske letter	Relevance; hearsay
DX115		12/24/81 Nakajima/Marofske Letter	Hearsay; parol evidence rule; relevance
DX117		3/10/82 Wood/Marofske Letter	Hearsay; parol evidence rule; relevance
DX118		3/17/82 Marofske/Jarocki Memorandum	Parol evidence rule; relevance
DX119		3/26/82 Wood/Marofske Letter	Hearsay; parol evidence rule; relevance
			Relevance; hearsay
DX125		7/29/83 Nakajima/Marofske letter	Authenticity; relevance; hearsay; foundation
DX127		Japanese notes on development of Puckman	

ATTACHMENT 11

PLAINTIFF'S OBJECTIONS TO EXHIBITS OFFERED BY DEFENDANTS

<u>Exh. No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
DX128		English translation of previous exhibit	Authenticity; relevance; hearsay; foundation
DX148		4/9/82 Marofske/Mullane Memorandum	Parol evidence rule; relevance
DX149		9/1/81 Tomy/Midway Trademark Assignment	Inadmissible under F. R. Ev. 408
DX150		9/1/81 Tomy/Midway Assignment and Grant Back License Agreement	Inadmissible under F. R. Ev. 408
DX152		2/11/82 O'Brian/Mason, Letter	Hearsay; foundation
DX153		Cornnuts Advertisement	Hearsay; relevance; foundation
DX154		Daily Log	Portions are irrelevant or hearsay, depending on their use; plaintiff reserves its objections until specific portions are offered
		Tomy Corp. Catalogue	Plaintiff reserves all objections it may have to use of this exhibit until it has been made available to plaintiff for inspection
PX112		11/20/81 NAPCEC/Distributors Letters	Relevance; foundation; hearsay
PX113		Urgent Legal Notice	Hearsay; foundation

ATTACHMENT 11

PLAINTIFF'S OBJECTIONS TO EXHIBITS OFFERED BY DEFENDANTS

<u>Trial Exh. No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
	PX132	7/26/82 Averett Affidavit ¶¶8-10, 50-100 and EA12	Hearsay, if offered by defendants
	PX180-203	NAPCEC Financial Information	No objection to PX203; plaintiff reserves all objec- tions it may have to defendants' use of PX180-202 until all documents, including workpapers, used in preparing PX180-202, and all documents on which defendants base their conten- tion that PX180-202 are incomplete, have been made available to plaintiff for inspection.
02461		6/8/81 Tomy Kogyo Trademark filing	Foundation (handwriting); hearsay
02467		6/8/81 Tomy Corp. Trademark filing	Foundation (handwriting); hearsay
02480		8/2/81 Hoffman Affidavit re Tomy Filings	Foundation; hearsay
02780		9/1/81 Midway/Tomy License Agreement Slides	Inadmissible under F. R. Ev. 408; foundation Plaintiff reserves all objections it may have to use of this exhibit until it has been made available to plain- tiff for inspection

ATTACHMENT 11

PLAINTIFF'S OBJECTIONS TO EXHIBITS OFFERED BY DEFENDANTS

Trial Exh. No.	Previous Designation	<u>Description</u>	<u>Objection</u>
		Monkeyshines game cartridge	Plaintiff reserves all objections it may have to use of this exhibit, until it has been made available to plain- tiff for inspection.
		Monkeyshines Official Rules	Plaintiff reserves all objections it may have to use of this exhibit, until it has been made available to plain- tiff for inspection.
		<u>Peanuts Classics</u> , by Charles M. Schulz; Holt, Rinehart and Winston; 1970	Plaintiff reserves all objections it may have to use of this exhibit, until it has been made available to plain- tiff for inspection.
		<u>The Missing Piece</u> , by Shel Silverstein; Harper & Row; 1976	Plaintiff reserves all objections it may have to use of this exhibit, until it has been made available to plain- tiff for inspection.
		Advertisement for Shel Silverstein books, page 5, section 14, <u>Chicago Tribune</u> , December 2, 1984	Plaintiff reserves all objections it may have to use of this exhibit, until it has been made available to plain- tiff for inspection.

ATTACHMENT 11

PLAINTIFF'S OBJECTIONS TO EXHIBITS OFFERED
BY DEFENDANTS

<u>Exhibit No.</u>	<u>Previous Designation</u>	<u>Description</u>	<u>Objection</u>
		K.C.'s Crazy Chase game cartridge	Plaintiff reserves all objections it may have to use of this exhibit, until it has been made available to plaintiff for inspection.
		Redacted copy of Atari-NAPCEC Settlement Agreement	Plaintiff reserves all objections it may have to use of this exhibit, until a complete copy has been made available to plaintiff for inspection, or sufficient information regarding the redacted portion is provided to plaintiff.
		Documents showing sales of individual Odyssey-2 cartridges	Plaintiff reserves all objections it may have to use of this exhibit, until it has been made available to plaintiff for inspection.
		Various videotapes, slides, charts, and demonstrations	Plaintiff reserves all objections it may have to use of these exhibits, until those documents have been made available for inspection.
		Financial materials showing NAPCEC's damages due to injunction	Plaintiff reserves all objections it may have to use of these exhibits, until those documents have been made available for inspection.